

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Jeffrey A. Baldwin
Voyles Vaiana Lukemeyer Baldwin &
Webb
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

David L. Bennett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 28, 2023

Court of Appeals Case No.
23A-CR-533

Appeal from the Marion Superior
Court

The Honorable James K. Snyder,
Magistrate

Trial Court Cause No.
49D28-2106-F2-19759

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

- [1] David L. Bennett brings this interlocutory appeal of the trial court’s denial of his motion to suppress evidence obtained during the search of his Pawnee Drive residence. The only issue he raises on appeal is whether the trial court erred in denying his motion because there was no probable cause for the search warrant authorizing the search of that residence.
- [2] We affirm.

Facts and Procedural History

- [3] In the beginning of October 2020, Indianapolis Metropolitan Police Department and ATF Task Force Officer Christopher Cooper (“Officer Cooper”) began a narcotics investigation based on information received from a confidential informant (“the CI”). The CI informed police that a man the CI knew as “DB” owned a blue Lincoln sedan that had recently sustained gunshots and was selling marijuana from an apartment located at 2472 Hillside Avenue in Indianapolis. Police conducted an investigation that identified “DB” as Bennett, and that investigation led to two separate search warrants being issued: one search warrant for 2472 Hillside Avenue and one search warrant for Bennett’s residence at 3236 Pawnee Drive and his blue Lincoln sedan. Officer Cooper prepared the request for the latter search warrant.
- [4] The search warrant affidavit submitted by Officer Cooper on June 23, 2021, contained the following information. Officer Cooper outlined his training and

experience as a law enforcement officer and his additional training and experience in narcotics investigations. He explained many of the common tactics that narcotics traffickers use, including the use of multiple residences or buildings to separate their residence from a “stash house,” out of which they conduct the narcotics sales. Ex. at 6. He noted that various items related to narcotics trafficking, such as narcotics and cash proceeds, may be found at residences or buildings “where controlled substances are being sold.” *Id.* Officer Cooper further noted that narcotics traffickers often possess written ledgers, computers, cell phones, pagers, other electronic communication equipment, substantial sums of cash, firearms, and video surveillance equipment related to the trafficking enterprise. The affidavit noted that items such as large sums of cash may be stored “either on [the narcotics dealer’s] person or ... at some other location.” *Id.* at 7.

- [5] The affidavit then detailed Officer Cooper’s investigation into Bennett. The investigation began with a controlled purchase of marijuana using the CI, who was equipped with an electronic monitoring and recording device. In early October 2020, the CI had purchased marijuana from Bennett inside the apartment located at 2472 Hillside Avenue using police “buy money.” *Id.* at 9. While the CI was inside the apartment, another individual entered and discussed purchasing narcotics with Bennett. Shortly thereafter, Officer Cooper observed the blue Lincoln sedan parked near the Hillside Avenue apartment. He checked the license plate of the blue Lincoln through the Bureau of Motor Vehicles and discovered that the vehicle was registered to Bennett and that his

address was 3236 Pawnee Drive in Indianapolis. Police obtained a photograph of Bennett, placed it in a photo array, and showed it to the CI, who then identified Bennett as the person who had previously sold the marijuana to the CI.

[6] Police began surveillance of Bennett's residence at Pawnee Drive. Officer Cooper drove past Bennett's Pawnee Drive residence and the Hillside Avenue apartment "continually" and established a pattern of Bennett's location based on where his blue Lincoln was parked. Ex. at 10. Officer Cooper observed that Bennett's blue Lincoln was regularly at Pawnee Drive in the morning and early afternoon; then, at around 2:00 p.m., Bennett's blue Lincoln would arrive at the Hillside Avenue apartment.

[7] In early November 2020, police conducted a second controlled purchase of marijuana from Bennett at the Hillside Avenue apartment using the CI. Police then continued surveillance of Bennett. They saw Bennett's blue Lincoln parked variously at his Pawnee Drive residence and the Hillside Avenue apartment "over a dozen times." *Id.* at 11. On June 17, 2021, June 21, 2021, and June 22, 2021, at around 2:00 p.m. on each day, police observed Bennett park his blue Lincoln outside the Hillside Avenue apartment, exit the car, and enter the apartment. On both June 17 and June 22, Bennett carried a white bag from his car to the apartment.

[8] At some point between June 20, 2021, and June 23, 2021, police conducted a third controlled purchase of marijuana from Bennett at the Hillside Avenue

apartment using the CI.¹ Then, on June 23, 2021, at around 1:15 p.m., police observed Bennett exit his Pawnee Drive residence, enter his blue Lincoln, and drive to a dry cleaner. Bennett entered the dry cleaner and exited carrying clothes, which he hung in the rear part of his car. Bennett then drove to the Hillside Avenue apartment and parked his blue Lincoln. Officer Cooper saw Bennett reach into the center console of his car and exit his car carrying a white bag in his hand. Officer Cooper observed that the white bag was the same or similar to the white bag that Bennett had carried from his blue Lincoln into the Hillside Avenue apartment on previous occasions. Bennett entered the Hillside Avenue apartment while carrying the white bag.

[9] In addition to the above facts, the affidavit seeking a search warrant of Bennett’s Pawnee Drive residence noted that police had obtained a search warrant for the Hillside Avenue apartment. Officer Cooper stated that he believed, based on his training and experience and police observations during the investigation, that Bennett was “using 2472 Hillside Avenue to conduct narcotics transactions.” Ex. at 15. Officer Cooper further stated that it was also his belief that Bennett lived at his Pawnee Drive residence and that Bennett stored “the majority of his narcotics, specifically marijuana,” at his residence, only carrying the amount he intended to sell that day to the Hillside Avenue apartment. *Id.* Officer Cooper reiterated that it was common practice for

¹ The search warrant affidavit, which is dated June 23, 2021, states that the third controlled buy took place “[w]ithin the last 72 hours.” Ex. at 14.

narcotics dealers to “conduct narcotics transactions in a place other than their residence” to conceal the location of their residence to avoid robberies and law enforcement. *Id.* at 16. He further stated that police expected to find at Bennett’s Pawnee Drive residence “a larger amount of narcotics or marijuana,” cash from narcotics transactions (including police “buy money” from the recent controlled transactions), and a detailed list of other items commonly associated with narcotics trafficking. *Id.* The affidavit then provided an exact and detailed description of the Pawnee Drive residence and Lincoln vehicle to be searched and the items for which police would search.

[10] The request for a search warrant for Bennett’s Pawnee Drive residence and his blue Lincoln was granted on June 23, 2021, and police executed the search warrants the following day. Police took Bennett into custody and searched his car. Inside the blue Lincoln police found a handgun, and Bennett had two cell phones in his pockets. At Bennett’s Pawnee Drive residence, police found a marijuana grinder, a digital scale with marijuana residue, marijuana, approximately 45 grams of cocaine, two handguns and ammunition, a surveillance system, and approximately \$1,000 in cash inside a safe. At the Hillside Avenue apartment, police found a digital scale with marijuana residue, marijuana, and a handgun.²

² In its Statement of the Facts, the State details statements Bennett allegedly made to Police in an interview given subsequent to the issuance of the search warrants for his residence and vehicle. We note those statements were not before the trial court that issued the search warrants and were not entered into evidence

[11] The State charged Bennett with dealing in cocaine, as a Level 2 felony;³ possession of cocaine, as a Level 3 felony;⁴ dealing in marijuana, as a Level 6 felony;⁵ maintaining a common nuisance-controlled substances, a Level 6 felony;⁶ and carrying a handgun without a license, as a Class A misdemeanor.⁷ Bennett filed a pretrial motion to suppress evidence obtained from the search of his residence, alleging that the affidavit seeking the warrant failed to establish probable cause for the search. The trial court held a suppression hearing and denied the motion to suppress. This interlocutory appeal ensued.

Discussion and Decision

[12] Bennett contends that the trial court erred when it denied his motion to suppress evidence discovered at the Pawnee Drive residence. He alleges that there was no probable cause for the search warrant that was issued for that residence, and, therefore, the subsequent search violated his right to be free from unreasonable searches under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. Both

at the suppression hearing. Therefore, we do not consider those statements in this appeal. *See Jagers v. State*, 687 N.E.2d 180, 182 (Ind. 1997) (noting, when reviewing the issuance of a search warrant, we only consider the evidence presented to the issuing judge).

³ Ind. Code § 35-48-4-1(a)(2) and (e)(1) (2021).

⁴ I.C. § 35-48-4-6(a) and (d)(1).

⁵ I.C. § 35-48-4-10(a)(2) and (c).

⁶ I.C. § 35-45-1-5(c).

⁷ I.C. § 35-47-2-1(2).

provisions require probable cause for the issuance of a search warrant and prohibit the admission of evidence seized in unconstitutional searches. *See Albrecht v. State*, 185 N.E.3d 412, 419 (Ind. Ct. App. 2022). These constitutional rights are codified in Indiana Code Section 35-33-5-2, which, among other things, requires 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.” Ind. Code § 35-33-5-2(a).

[13] As this Court recently stated,

[i]n determining whether to issue a search warrant, “[t]he task of the issuing magistrate is simply to make a practical, commonsense 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.” *Jagers v. State*, 687 N.E.2d 180, 181 (Ind. 1997) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983)) (brackets and ellipsis in *Jagers*). “The duty of the reviewing court is to determine whether the magistrate had a ‘substantial basis’ for concluding that probable cause existed.” *Id.* (quoting *Gates*, 462 U.S. at 238-39, 103 S. Ct. 2317). “Probable cause is a fluid concept incapable of precise definition and must be decided based on the facts of each case.” *Smith [v. State]*, 982 N.E.2d [393,] 404 [(Ind. Ct. App. 2014), *trans. denied*]. “The level of proof necessary to establish probable cause is less than that necessary to establish guilt beyond a reasonable doubt.” *Jellison v. State*, 656 N.E.2d 532, 534 (Ind. Ct. App. 1995). “Probable cause means a probability of criminal activity, not a

prima facie showing.” *Fry v. State*, 25 N.E.3d 237, 244 (Ind. Ct. App. 2015), *trans. denied*. It “may be established by evidence that would not be admissible at trial.” *Jellison*, 656 N.E.2d at 534. Such evidence may include hearsay, which is an out-of-court statement offered to prove the truth of the matter asserted. Ind. Evidence Rule 801(c).

When we review whether probable cause supported the issuance of a search warrant, we “afford ‘significant deference to the magistrate’s determination’” and “focus on whether reasonable inferences drawn from the totality of the evidence support that determination.” [*State v.*] *Spillers*, 847 N.E.2d [949,] 953 [(Ind. 2006),] (quoting *Houser v. State*, 678 N.E.2d 95, 98-99 (Ind. 1997)). We consider only the evidence presented to the issuing judge and not post hoc justifications for the search. *Jaggers*, 687 N.E.2d at 182. “‘A presumption of validity of the search warrant exists, and the burden is upon the defendant to overturn that presumption.’” *Rios v. State*, 762 N.E.2d 153, 156-57 (Ind. Ct. App. 2002) (quoting *Snyder v. State*, 460 N.E.2d 522, 529 (Ind. Ct. App. 1984)). “In determining whether an affidavit provided probable cause for the issuance of a search warrant, doubtful cases should be resolved in favor of upholding the warrant.” *State v. Shipman*, 987 N.E.2d 1122, 1126 (Ind. Ct. App. 2013).

Albrecht, 185 N.E.3d at 419-20.

[14] Bennett admits that Officer Cooper’s search warrant affidavit described with particularity the place to be searched and the things to be seized. However, he asserts that affidavit failed to show probable cause to search the Pawnee Drive home because it “failed to establish a nexus between the residence to be searched and [Officer Cooper’s] belief that contraband or evidence of a crime would be found there.” Appellant’s Br. at 11. Bennett contends that “the

entirety of the probable cause affidavit focused exclusively on suspected criminal activity occurring at 2427 Hillside Avenue.” *Id.*

[15] Bennett’s contentions are incorrect. As previously noted, Officer Cooper’s affidavit stated that one of the common tactics used by a narcotics trafficker is to sell drugs out of a “stash house,” which is a building separate from the trafficker’s residence. Ex. at 6. Thus, narcotics and cash can often be found at such “stash houses.” *Id.* However, narcotics traffickers also often possess other items related to their trafficking, such as substantial sums of cash, which may be stored on the drug trafficker’s person or at some other location. The affidavit then detailed Officer Cooper’s months-long investigation into Bennett’s marijuana trafficking activities, which included Bennett’s consistent, daily movement in his blue Lincoln sedan from his residence at Pawnee Drive to the Hillside Avenue apartment, where he repeatedly sold marijuana to the CI and to where he repeatedly was seen carrying a white bag. Officer Cooper then specifically stated that he believed Bennett—in keeping with the common tactics of narcotic dealers—kept “the majority of his narcotics” at his Pawnee Drive residence and used his Lincoln to transport to the Hillside Avenue stash house only the “narcotics he plan[ned] to sell” each day. *Id.* at 15. Thus, Officer Cooper stated that he “believe[d] there will be a larger amount of narcotics or marijuana and proceeds, including IMPD buy money, from narcotics/marijuana transactions” at the Pawnee Drive location. *Id.* at 16.

[16] Thus, Officer Cooper’s affidavit seeking the search warrant for the Pawnee Drive address set forth circumstances showing a fair probability that contraband

or evidence of a crime would be found at that address. The court that issued the search warrant had a “‘substantial basis’ for concluding that probable cause existed” for the search. *Albrecht*, 185 N.E.3d at 419. Bennett has failed to carry his burden of overturning the presumption of the search warrant’s validity. *See id.*

Conclusion

- [17] The affidavit seeking a warrant to search Bennett’s Pawnee Drive residence provided probable cause that evidence of narcotics trafficking would be found there. The court did not err in issuing the warrant.⁸
- [18] Affirmed.

May, J., and Felix, J., concur.

⁸ Given this holding, we do not address the State’s alternative argument that the good faith exception to the exclusionary rule applies.