

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 10, 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.

No. 99-1771-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES N. NEVILLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Richland County:
EDWARD E. LEINEWEBER, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. James Neville appeals from a judgment convicting him as a party to the crime of manufacturing marijuana. The charge resulted from evidence seized pursuant to a search warrant. He entered a no contest plea after the trial court refused to suppress that evidence. The sole issue on appeal is

whether the search warrant issued on probable cause. We conclude it did, and therefore affirm.

¶2 A Richland Center police officer submitted a search warrant application on March 5, 1998. It stated that on March 2, police officers searched three garbage bags located outside Neville's back door. In one bag they found items with Neville's name on them and a small amount of marijuana. The application also noted that a police officer had reported that Neville "appeared high" several weeks earlier.

¶3 On review of the application, a court commissioner determined that probable cause existed, and authorized a warrant to search Neville's residence for evidence of marijuana and its use, manufacture and delivery. Such evidence was discovered when officers executed the warrant, resulting in this prosecution.

¶4 A search warrant may issue when, considering the totality of the circumstances, probable cause exists to believe that objects linked to a crime are likely to be found in the designated place. *See State v. Ehnert*, 160 Wis. 2d 464, 470, 466 N.W.2d 237 (Ct. App. 1991). Probable cause is neither a technical nor legalistic concept, but is a "flexible, common-sense measure of the plausibility of particular conclusions about human behavior." *State v. Kerr*, 181 Wis. 2d 372, 379, 511 N.W.2d 586 (1994). The issuing magistrate must make a practical, common-sense determination of a fair probability that inculpatory evidence will be found if the warrant issues. *See State v. Higginbotham*, 162 Wis. 2d 978, 990, 471 N.W.2d 24 (1991). Our review of the magistrate's decision is highly deferential. *See State v. DeSmidt*, 155 Wis. 2d 119, 132, 454 N.W.2d 780 (1990).

¶5 The court commissioner reasonably inferred that evidence of drug crimes was present in Neville's home. Considering the trash collection practices

in Neville's community and the habits of most people, the issuing magistrate made a reasonable, common sense determination that the marijuana found in the trash was put there on or shortly before March 2. Evidence of this recent drug use allowed the inference that evidence of drugs remained in the home a few days later, especially where police had a prior indication that Neville used illicit substances.

By the Court.—Judgment affirmed.

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

