

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 6, 2007

David R. Schanker
Clerk of Court of Appeals

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.

Appeal No. 2006AP2267-CR

Cir. Ct. No. 2004CF368

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDWARD G. KANAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County:
DANIEL W. KLOSSNER, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Bridge, JJ.

¶1 PER CURIAM. Edward Kanas appeals a judgment convicting him of possession of tetrahydrocannabinols (THC), manufacturing THC, and maintaining a drug trafficking place. He argues that the circuit court erred when it denied his motion to suppress evidence. We affirm.

¶2 Kanas first argues that the police officer made statements that were either deliberately false or made with reckless disregard for the truth in the affidavit supporting the request for a search warrant.

¶3 When challenging the veracity of statements in support of a search warrant, “the defendant must ... prove, by a preponderance of the evidence, that the challenged statement is false, and it was made intentionally or with reckless disregard for the truth, and that absent the challenged statement the affidavit does not provide probable cause.” *State v. Anderson*, 138 Wis.2d 451, 462, 406 N.W.2d 398 (1987) (citation omitted). “[T]o prove reckless disregard for the truth, the defendant must prove that the affiant in fact entertained serious doubts as to the truth of the allegations or had obvious reasons to doubt the veracity of the allegations.” *Id.* at 463 (citation omitted). “Because the defendant must show either intent or reckless disregard, [the] hearing, by necessity, focuses on the state of mind of the affiant.” *Id.* at 464 (footnote and citation omitted). If the defendant shows that the statements were deliberately false or made with reckless disregard for the truth, “the [F]ourth [A]mendment requires that the search warrant be voided and the evidence discovered pursuant to the warrant be suppressed.” *Id.* at 463 (citation omitted).

¶4 Whether a false statement in an affidavit in support of a search warrant was intentionally made or was made with reckless disregard for the truth is a question of fact for the circuit court. *State v. Mann*, 120 Wis. 2d 629, 632, 357 N.W.2d 9 (Ct. App. 1984), *rev’d on other grounds*, 123 Wis. 2d 375, 367 N.W.2d 209 (1985). We will affirm a circuit court’s findings of fact unless they are clearly erroneous. *Id.*

¶5 Dodge County Deputy Sheriff James Rohr prepared an affidavit in support of a search warrant for the premises, vehicles, barn and any other out-buildings at N6354 Mine Road, Iron Ridge, Wisconsin. In the affidavit, Rohr said that he saw marijuana plants growing in two different areas on property owned by Carl and Catherine Kanas of N6354 Mine Road, Iron Ridge, Wisconsin, which were being tended by a member of the Kanas family.

¶6 It is undisputed that the affidavit incorrectly identified the owner of the land where the marijuana plants were seen growing as Carl and Catherine Kanas. The land is owned by Kanas Farms, Inc., and is adjacent to land owned by Carl and Catherine. Deputy Rohr explained that he made a mistake in assuming that Kanas Farms was owned by Carl and Catherine. He explained that he had seen Thomas Kanas, the adult son of Carl and Catherine, tending the marijuana plants and had also seen Thomas driving a tractor to and from the barn on the land owned by Carl and Catherine, so he assumed that all of the land was owned by Carl and Catherine despite the fact that some of it was titled to Kanas Farms.

¶7 The circuit court concluded that Deputy Rohr's failure to conduct further investigations to determine who owned Kanas Farms may have constituted "sloppy work," but that Rohr did not show a reckless disregard for the truth and did not intentionally make false statements. Our review of the testimony shows that Deputy Rohr provided a reasonable explanation of why he did not investigate further. That is consistent with the circuit court's finding that Deputy Rohr did not act intentionally or with reckless disregard for the truth when he incorrectly identified the owner of the land where the plants were growing. The court's finding of fact is not clearly erroneous.

¶8 Kanas next argues that the search warrant affidavit did not provide probable cause even if the erroneous information about the farm ownership is included. He argues that there is no nexus between the property that was searched—the premises at N6354 Mine Road, barn and outbuilding—and the field where the illegal activity—the plant cultivation—was observed. “Search warrants may issue only upon ‘a finding of probable cause by a neutral and detached magistrate.’” *State v. Ward*, 2000 WI 3, ¶21, 231 Wis. 2d 723, 604 N.W.2d 517. “The 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.” *Id.*, ¶23 (citation omitted). “The magistrate’s determination will stand unless the defendant establishes that the facts are clearly insufficient to support a probable cause finding.” *Id.*, ¶21.

¶9 The facts averred in the search warrant support the circuit court’s conclusion that there was probable cause. Deputy Rohr saw marijuana plants growing on land he believed belonged to Catherine and Carl Kanas. He saw Thomas Kanas tending the marijuana plants and going between the plants and the barn near the house on his tractor. A citizen informant told Rohr that Catherine Kanas had told the informant within the last week that Dan Kanas and Edward Kanas, other adult children of Carl and Catherine, were “down in the barn ‘cooking some leaves.’” An informant also told police that the informant had helped Thomas Kanas at the farm within the last eighteen months move numerous coffee cans containing large amounts of currency. It can be reasonably inferred that the money in the coffee cans was from an illegal activity because it was stored in a peculiar way and because that same person, Thomas, was recently seen tending the marijuana plants. Another informant told police that Thomas was “the

largest drug dealer in Dodge County.” Bearing in mind that “[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,” *Id.*, ¶23, we conclude that the court properly determined that there was probable cause to believe that evidence of drug manufacturing and selling would likely be found at the Mine Road residence, barn and outbuildings.

By the Court.—Judgment affirmed.

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

