COURT OF APPEALS
DECISION
DATED AND FILED

May 20, 2003

Cornelia G. Clark
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. 02-2066-CR

Cir. Ct. No. 01-CF-217

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

CHRISTOPHER BUNTEN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Douglas County: JOSEPH A. McDONALD, Judge. *Reversed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The State appeals that part of an order granting Christopher Bunten's motion to suppress evidence seized during the execution of a search warrant. The State argues the circuit court erred by granting the suppression motion because the evidence was admissible under the independent source doctrine. We agree and reverse the order suppressing evidence.

BACKGROUND

¶2 On September 15, 2001, Division of Narcotics Enforcement Agent Daniel Bethards sought a search warrant for Bunten's residence, based on informants' tips regarding methamphetamine manufacturing by Bunten and Joel Clarke. In order to secure the residence until Bethards obtained the search warrant, City of Superior police officers made a warrantless entry of Bunten's home. During the warrantless entry, officers completed a protective sweep of the residence, looking for people and dangerous items in the house. Seven people, including Bunten, were searched for weapons and brought outside because the chemicals reported to be in the house were health and fire hazards. The search warrant arrived approximately one hour and forty-five minutes after the officers entered the residence. Several items were ultimately seized during execution of the search warrant.

¶3 The State charged Bunten with one count each of possession of drug paraphernalia, manufacturing of methamphetamine and storage and handling of anhydrous ammonia, all as party to a crime. Bunten moved to suppress all evidence and statements derived directly and indirectly from the search of his residence on the ground that the search warrant was not supported by probable cause. Bunten, alleging that the police officers began the search without the search warrant, also moved to suppress any evidence obtained during the initial illegal search. The circuit court found that the search warrant was supported by probable cause. The court, however, suppressed all the evidence, concluding that it was tainted by the initial warrantless entry. This appeal follows.

ANALYSIS

¶4 The State does not challenge the suppression of Bunten's statements because it concedes that the initial warrantless entry into the house was illegal. The State argues, however, that all evidence seized in the execution of the search warrant is admissible under the independent source doctrine. Review of an order granting a motion to suppress evidence presents a question of constitutional fact that we review under two different standards. We uphold a circuit court's findings of fact unless they are clearly erroneous. ***State v. Secrist***, 224 Wis. 2d 201, 207, 589 N.W.2d 387 (1999). We then independently apply the law to those facts. ***State v. Kiekhefer***, 212 Wis. 2d 460, 475, 569 N.W.2d 316 (Ct. App. 1997).

¶5 The independent source doctrine permits the introduction of evidence discovered during an unlawful search, but later obtained independently as a result of lawful activities untainted by the initial illegality. ***Murray v. United States***, 487 U.S. 533, 537 (1988). The relevant inquiry is whether the illegal search had any effect in producing the challenged evidence, that is: "Whether, granting the establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." ***Wong Sun v. United States***, 371 U.S. 471, 488 (1963). This court has applied a two-pronged test to determine the admissibility of evidence under the independent source doctrine. ***State v. Lange***, 158 Wis. 2d 609, 626, 463 N.W.2d 39 (Ct. App. 1990). "We first examine whether the agent would have sought the warrant if he had not made the illegal entry, and then inquire if information obtained during that entry affected the magistrate's decision to issue the warrant." ***Id.***

¶6 Here, the record shows that Bethards decided to obtain the search warrant before the illegal entry was made. The supporting affidavit described information from three informants as the basis for obtaining the warrant. No information obtained by the police after the illegal entry prompted the police to seek the search warrant or affected the judge's decision to issue the search warrant. *See* ***id.*** We therefore conclude that the evidence seized in the execution of the search warrant is admissible under the independent source doctrine.

¶7 Bunten nevertheless claims that reliance on the independent source doctrine is misplaced because the search warrant was not supported by probable cause. Probable cause supporting a search warrant is determined by the totality of the circumstances. ***State v. DeSmidt***, 155 Wis. 2d 119, 131, 454 N.W.2d 780 (1990). A finding of probable cause is a commonsense test. "The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." ***State v. Ward***, 2000 WI 3, ¶23, 231 Wis. 2d 723, 604 N.W.2d 517 (quoting ***Illinois v. Gates***, 462 U.S. 213, 238 (1983)). The warrant-issuing judge may draw reasonable inferences from the facts asserted in the affidavit. ***State v. Benoit***, 83 Wis. 2d 389, 399, 265 N.W.2d 298 (1978). "The test is not whether the inference drawn is the only reasonable inference. The test is whether the inference drawn is a reasonable one." ***Ward***, 231 Wis. 2d 723, ¶30.

¶8 Appellate courts "accord great deference to the warrant-issuing judge's determination of probable cause, and that determination will stand unless the defendant establishes that the facts are clearly insufficient to support a finding of probable cause." ***State v. Multaler***, 2002 WI 35, ¶7, 252 Wis. 2d 54, 643

N.W.2d 437. The defendant bears the burden of proving insufficient probable cause when challenging a search warrant. ***Id.***

¶9 Bunten argues that because the supporting affidavit failed to show that the confidential informants were reliable, the warrant was not supported by probable cause. We are not persuaded. Three confidential informants (CI's) reported that Clarke was manufacturing methamphetamine and storing the chemicals and paraphernalia used in the manufacturing process at Clarke's mother's house and at Bunten's house. CI #1 and CI #2 both reported that Clarke was showing a large number of people how to cook methamphetamine. All three informants reported that Clarke had a number of people, including minors, steal chemicals for methamphetamine production. CI #1 and CI #3 both said that Clarke intended to cook enough methamphetamine to raise money to leave Douglas County before an impending trial date. CI #3 said there was an explosion at Bunten's home, caused by mishandling of chemicals used in the manufacturing process. CI #3 added: "[T]here is tolene, muriatic acid and other paraphernalia currently in Bunten's home that is ready to be used for the large batch of methamphetamine that is going to be cooked tonight."

¶10 The details provided by the informants and their mutually corroborating statements provide indicia of reliability. *See* ***Williams v. Maggio***, 679 F.2d 381, 391-92 (5th Cir. 1982); *see also* ***United States v. Hyde***, 574 F.2d 856, 863 (5th Cir. 1978). That reliability would permit a reviewing magistrate to conclude that he or she was relying on something more substantial than casual rumor or an accusation based merely on reputation. *See* ***State v. Morett***, 144 Wis. 2d 171, 186, 423 N.W.2d 841 (1988). The warrant as a whole provided the magistrate with a substantial basis for concluding that probable cause existed. *See* ***State v. Anderson***, 138 Wis. 2d 451, 471, 406 N.W.2d 398 (1987).

By the Court.—Order reversed.

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