

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 8, 2011**

A. John Voelker  
Acting 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. 2010AP1101-CR**

**Cir. Ct. No. 2008CF237**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICHARD E. ADERHOLDT,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Langlade County:  
FRED W. KAWALSKI, Judge.<sup>1</sup> *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

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<sup>1</sup> Judge Kawalski conducted the plea hearing and sentencing after Judge Patrick Madden denied Aderholdt's motion to suppress the evidence.

¶1 PER CURIAM. Richard Aderholdt appeals a judgment convicting him of manufacturing THC with intent to deliver and maintaining a drug trafficking place. He argues that the circuit court erred when it denied his motion to suppress evidence seized pursuant to a search warrant because the affidavit in support of the warrant failed to establish probable cause that contraband would be found in Aderholdt's home. Specifically, he contends that the affidavit lacked sufficient detail to evaluate a confidential informant's information and the information was stale. He also argues that the court should have conducted a *Franks/Mann*<sup>2</sup> hearing to determine whether the police intentionally, or with reckless disregard for the truth, omitted information from the affidavit that would establish the staleness of the confidential informant's information. We reject these arguments and affirm the judgment.

¶2 The affidavit in support of the warrant established the confidential informant's credibility and the reliability of the information he furnished. The affidavit states that the confidential informant had been to Aderholdt's house many times, he knew Aderholdt's nickname, "Zeech," and he had often purchased marijuana, heroin, "oxy" pills, and needles from Aderholdt. These statements against penal interest where there is no apparent motive for the confidential informant to lie adequately establish his credibility. See *State v. Romero*, 2009 WI 32, ¶36, 317 Wis. 2d 12, 765 N.W.2d 756. The affidavit also stated that the informant had provided accurate and truthful information in the past which the investigator verified in previous cases.

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<sup>2</sup> *Franks v. Delaware*, 438 U.S. 154 (1978); *State v. Mann*, 123 Wis. 2d 375, 367 N.W.2d 209 (1985).

¶3 In addition, the informant provided detailed information that enhance the reliability of his statement. He described in detail Aderholdt’s secret “grow room,” including the fact that it could only be accessed by an elevator and “when you reach the bottom level walk straight and you’ll see a special built room.” The investigating officer further corroborated the informant’s information by examining Aderholdt’s more recent electricity records, which showed sharp increases and decreases in power consumption that the investigator said was “consistent with marijuana growing operations” based on his experience and training. The information contained in the affidavit establishes probable cause because it would lead a reasonable person to conclude that the evidence sought is likely to be in a particular location. *State v. Ward*, 2000 WI 3, ¶34, 231 Wis. 2d 723, 604 N.W.2d 517.

¶4 The last time the informant had been in Aderholdt’s residence was one year before the application for the search warrant. Aderholdt contends that this gap renders the information too stale to support probable cause. However, the mere passage of time does not necessarily render the information stale. When the activity is of a protracted and continuous nature, the passage of time diminishes in significance. *State v. Ehnert*, 160 Wis. 2d 464, 469-70, 466 N.W.2d 237 (Ct. App. 1991). The informant’s statements that he purchased drugs from Aderholdt over a ten year period and his description of the modifications to Aderholdt’s house strongly suggest that Aderholdt’s drug operations would not be readily abandoned.

¶5 Finally, the court properly denied Aderholdt’s request for a *Franks/Mann* hearing. Because the one-year time lapse does not alter the probable cause determination in this case, omitting that information from the affidavit does not provide any basis for relief. A hearing is only required after a

defendant makes a substantial preliminary showing that the omitted information is necessary to the finding of probable cause. *State v. Mann*, 123 Wis. 2d 375, 367 N.W.2d 209 (1985).

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

