



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

February 19, 2019

To:

Hon. Raymond S. Huber
Circuit Court Judge
Waupaca County Courthouse
811 Harding St.
Waupaca, WI 54981

Terrie J. Tews
Clerk of Circuit Court
Waupaca County Courthouse
811 Harding St.
Waupaca, WI 54981

Thomas Brady Aquino
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Veronica Fay Isherwood
District Attorney
811 Harding St.
Waupaca, WI 54981-2012

Anne Christenson Murphy
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following opinion and order:

2018AP792-CR

State of Wisconsin v. Robert W. Marsh (L.C. # 2014CF87)

Before Lundsten, P.J., Blanchard and Kloppenburg, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robert Marsh appeals a circuit court judgment convicting him of one count of possession with intent to deliver THC. Marsh argues that the warrant used to search his home was not supported by probable cause. Based upon our review of the briefs and record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-18).¹ We affirm.

The warrant affidavit included the following information. Police had received an anonymous tip within the preceding month of possible illegal narcotics activity at 309½ Waupaca Street in New London. The police also had information that a person named Robert Marsh resided at that address. An officer conducted surveillance on the residence and observed a man entering a vehicle parked in the driveway. The officer checked the vehicle's registration and discovered there was an arrest warrant for the vehicle's owner, Ryan Wallander. The officer observed the vehicle leave the 309½ Waupaca Street residence. The officer stopped the vehicle and found that Wallander was driving. The officer advised Wallander that he was under arrest, then asked Wallander if he had anything illegal in his vehicle. Wallander stated that he had a \$25 baggie of marijuana. The officer asked Wallander if he had just purchased the marijuana from the 309½ Waupaca Street residence. Wallander replied that he had, and Wallander further stated that he purchased the marijuana from someone named Robert who lived at the residence.

Based on the above information, the police obtained and executed a warrant to search Marsh's home, the 309½ Waupaca Street residence, for evidence of the possession or sale of controlled substances. The police discovered a number of incriminating items, including marijuana and other drugs. Marsh moved to suppress, arguing that the warrant affidavit failed to establish probable cause. The circuit court denied the motion.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

We give “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. Romero*, 2009 WI 32, ¶18, 317 Wis.2d 12, 765 N.W.2d 756 (quoted source omitted). The warrant-issuing judge’s task “is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit ..., 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.” *Id.*, ¶19 (internal quotation marks and quoted source omitted).

Marsh argues that the information that Wallander provided was insufficiently reliable to establish probable cause. Marsh points to our supreme court’s directive that “facts must be brought to the warrant-issuing officer’s attention to enable the officer to evaluate either the credibility of the declarant or the reliability of the particular information furnished.” *Id.*, ¶21. Marsh argues that nothing in the warrant affidavit either established Wallander’s general credibility or corroborated the information Wallander provided here.

We disagree that the affidavit lacked corroboration of Wallander’s information, and conclude that the warrant affidavit as a whole supplied probable cause. To begin, Wallander’s information and the anonymous tip that the police already possessed corroborated one another. Additionally, Wallander’s statement that someone named Robert lived at the 309½ Waupaca Street residence was corroborated by the police officers’ prior information that a person named Robert Marsh lived at the residence. Finally, the surveilling officer’s direct observation of Wallander leaving the residence immediately before being found in possession of marijuana corroborated Wallander’s statement that he had just purchased the marijuana at the residence.

Although the officer's observations did not corroborate every detail of Wallander's statements, that level of corroboration was not necessary under the circumstances here. "The veracity of a hearsay declarant and the basis of the declarant's knowledge are highly relevant in determining the value of his report but these elements should [not] be understood as entirely separate and independent requirements to be rigidly exacted in every case." *Id.*, ¶20 (internal quotation marks and quoted source omitted). "These elements should instead be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is probable cause." *Id.* (internal quotation marks and quoted source omitted). Here, the most commonsense, reasonable inference based on the totality of the circumstances was that Wallander purchased the baggie of marijuana from Marsh at Marsh's residence, just as Wallander claimed.

Marsh argues that Wallander's reliability was suspect because Wallander was under arrest and provided information in response to the officer's leading question about whether Wallander purchased the baggie of marijuana at the 309½ Waupaca Street residence. Marsh points to *State v. Popp*, 2014 WI App 100, 357 Wis. 2d 696, 855 N.W.2d 471, in which the court questioned the reliability of information "offered in consideration for leniency." *See Popp*, 357 Wis. 2d 696, ¶32. Here, however, nothing in the warrant affidavit specifically indicates that Wallander sought leniency or thought he would receive leniency by implicating Marsh or the 309½ Waupaca Street residence. Accordingly, we reject Marsh's argument that Wallander's arrest and the officer's leading question are significant circumstances that undercut probable cause. Moreover, we note that the warrant affidavit indicates that some of the information Wallander provided went beyond the information contained in the officer's leading question.

The affidavit supports a reasonable inference that Wallander was the first to bring up the name Robert and to state that Robert lived at the residence.

Therefore,

IT IS ORDERED that the circuit court's judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals