



STATE OF OHIO)
CUYAHOGA COUNTY)

) SS: **FILED**

IN THE COURT OF COMMON PLEAS
CASE NO. CR-13-577186

STATE OF OHIO

2014 MAY 28 A 8:37

Plaintiff,

) CLERK OF COURTS
) CUYAHOGA COUNTY

vs.

) OPINION
)
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)

TINA M. EVANS

Defendant.

SHIRLEY STRICKLAND SAFFOLD, JUDGE:

I. FACTUAL BACKGROUND

The Defendant, Tina M. Evans (hereinafter "Defendant"), is charged in an eight count indictment alleging violations of Ohio Revised Code §2925.03(A)(2), Trafficking; §2925.11(A), Drug Possession; §2923.24(A), Possession Criminal Tools; and § 2919.22(A), Endangering Children.

Cleveland Detectives received information from a confidential informant (hereinafter "CI") regarding Defendant selling crack cocaine from her residence, which is located at 3553 Trent Road in the City of Cleveland. The CI also identified the vehicle being used by the Defendant to the Cleveland Detectives, including the make, model, and license plate number; which was listed to the Defendant. Upon receiving this information, on or about August 2, 2013, the Cleveland Detectives executed a controlled buy to corroborate the information received from the CI. Detective John Lally, Badge No. 886, executed a search of the CI prior to the controlled buy, and found him to be free of any drugs, currency, or contraband. *See State's Exhibit 1*; Detective Lally's Affidavit of Search Warrant (hereinafter "Affidavit"). The CI was then furnished with a quantity of U.S. currency, from which the serial numbers had been recorded,

with which he was to use to complete the controlled buy from Defendant at or around the Fulton Road and Clark Avenue intersection. Detective Mitchell, Badge No. 1191, transported the CI to the controlled buy location via a undercover police vehicle where another detective, Detective Fairchild, Badge No. 2138, was waiting in a stationary undercover police vehicle.

Detective Fairchild thereafter observed the controlled buy which occurred in Defendant's vehicle. Following the transaction, Defendant travelled from the location of the controlled buy to her residence at 3553 Trent Avenue while Detective Norman, Badge No. 1803, followed in an undercover police vehicle. Detective Fairchild then observed Defendant entering her residence at 3553 Trent Avenue.

On or about August 5, 2013, Cleveland Detectives received a search warrant to Defendant's residence, 3553 Trent Avenue. During the execution of the search warrant, Cleveland Detectives were able to recover contraband from Defendant's residence.

The Defendant alleges that the Affidavit lacked sufficient factual support to issue the warrant to search Defendant's residence, and the evidence obtained from that search should therefore be suppressed pursuant to the Fourth and Fourteenth Amendment to the United States Constitution and Article I, Section 10 and 16 of the Ohio Constitution.

Accordingly, the Defendant filed a Motion to Suppress on May 13, 2014, and a hearing on that Motion was subsequently held on May 19, 2014. All parties were present and heard on the record.

II. LAW AND ARGUMENT

Defendant is requesting that this Honorable Court suppress "any and all physical evidence that the prosecution intends to use at trial..." *Defendant's Motion to Suppress*, p.1. Defendant maintains that the physical evidence obtained through the use of the search warrant,

which was issued on August 5, 2013, was supported by an affidavit which lacked sufficient factual support. Specifically, Defendant maintains that the Affidavit “failed to provide any facts that contraband would be found at defendant’s address,” based on Defendant’s participation in an off-site controlled buy; and therefore did not provide the requisite probable cause necessary for a search warrant to issue. *Defendant’s Motion to Suppress*, p.2. This argument is unpersuasive.

When determining the sufficiency of probable cause in an affidavit used in support of a search warrant, the test is “whether, given all the circumstances set forth in the affidavit before [the magistrate or judge], 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.”¹ And, the Fourth Amendment exclusionary rule will not be applied to bar evidence obtained by officers acting in objectively reasonable reliance on the search warrant that is issued by a neutral magistrate, which is ultimately found to be unsupported by probable cause.²

In determining the reasonableness of the reliance, the reviewing court undertakes a good-faith inquiry into the four corners of the affidavit to ascertain whether a reasonably well trained officer would have known that the search was illegal despite the magistrate’s [or judge’s] authorization.³

In support of Defendant’s Motion to Suppress, Defendant relies solely on an Eighth District Court of Appeals case, captioned *State v. Gales*.⁴ In *Gales*, the Cleveland Police obtained information from a confidential reliable informant (hereinafter “CRI”) that the

¹ *State v. George* (1989), 45 Ohio St.3d 325; 544 N.E.2d 640, paragraph one of the syllabus, following *Illinois v. Gates* (1983), 462 U.S. 213, 238-239, 103 S.Ct. 2317, 76 L.Ed.2d 527.

² *State v. George* (1989), 45 Ohio St.3d 325; 544 N.E.2d 640, paragraph three of the syllabus, following *United States v. Leon* (1984), 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677.

³ *State v. Jones* (1991), 72 Ohio App.3d 522, 526, 595 N.E.2d 485, quoting *Leon*, 468 U.S. 897 at 923.

⁴ *State v. Gales*, 143 Ohio App.3d 55, 757 N.E.2d 390 (8th Dist.2001).

Defendant was dealing heroin. Based on this information, the CRI executed two controlled buys. The first controlled buy occurred several months before the issuance of the search warrant of the residence within which the contraband was obtained.⁵ However, the second controlled buy allegedly occurred within three days of the date of the affidavit which gave rise to the search warrant which was the subject of the appeal.⁶ During the second controlled buy, the CRI made contact with the Defendant and agreed to meet at an off-site location.⁷ The CRI was thereafter issued an amount of U.S. currency, the serial numbers of which were recorded; driven to the meet-up location; and then observed entering a "black male's" vehicle where the exchange occurred.⁸ Shortly thereafter, the vehicle in which the controlled buy occurred was observed at the premises which was identified in the affidavit and later the subject of a search warrant. In the execution of the search warrant, the Drug Enforcement Administration and Cleveland Police recovered heroin, along with U.S. currency, various guns, and other miscellaneous items.⁹

The court in *Gales* held, in regards to the second controlled buy, that the supporting affidavit could not be "reasonably read to show that the unidentified black male involved in the transaction transported the heroin at issue to the CRI" at the premises which was the subject of the search warrant because nothing in the affidavit tied the vehicle to the premises.¹⁰ Therefore, the Court held that due to the lack of reasonableness of the reliance on the search warrant, there lacked probable cause to search the residence in question.¹¹

⁵ *Id.* at 59

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 62.

¹¹ *Id.* at 64.

After hearing both parties, and reviewing the case law in question, it is clear that there exists a number of distinguishing factors in the case at hand that prove fatal to the Defendant's reliance on the *Gales* case. The present case involved one woman, the Defendant, who contacted the CI to make a buy; met the CI at a predetermined location in a vehicle which was registered to her; and then drove to the residence that was the subject of the resulting search warrant, which was also listed in her name. There is a clear "tie" between the vehicle, the residence, the defendant, and the contraband; unlike in the *Gales* case.

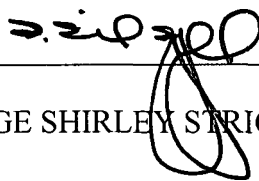
III. CONCLUSION

Accordingly, as the State was able to demonstrate relevant distinguishing factors from the sole case cited by the Defendant in her Motion to Suppress, and further proved that there was the requisite reasonable reliance on the four corners of the affidavit to issue to search warrant, the Motion to Suppress is hereby denied in its' entirety.

IT IS SO ORDERED.

5/20/14

DATE



JUDGE SHIRLEY STRICKLAND SAFFOLD