

NO. 85746-6

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

PATRICK JIMI LYONS,

Defendant/Petitioner.

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SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ISSUES

1. Whether a detective's search warrant affidavit, stating that he had been contacted by a reliable and confidential source "[w]ithin the last 48 hours" and that the source had observed marijuana being grown indoors, set forth sufficient facts and circumstances to establish a reasonable probability that criminal activity was occurring?

2. Does a common sense reading of the affidavit support a logical and reasonable inference that the confidential source's observation occurred within the same 48 hour time frame?

3. While giving great deference to the issuing magistrate, has there been a showing that the magistrate abused his discretion in determining that there was probable cause to issue the search warrant?

II. STATEMENT OF THE CASE

A complete recitation of the facts is contained in the parties' briefs filed in the Court of Appeals. (**Appellant's Brief at 2-5, Respondent's Brief at 3-7**)

III. ARGUMENT.

1. **When read in a commonsense manner, rather than hypertechnically, the affidavit was sufficient to establish probable cause, and the issuing judge did not abuse his discretion.**

At issue in this case is the following language in Detective Garza's affidavit:

Within the last 48 hours a reliable and confidential source of information (CS) contacted YCNU Detectives and stated he/she observed narcotics, specifically marijuana, being grown indoors at the listed address. The CS knows the suspect and homeowner as "Jimmy". The CS observed the growing marijuana while inside an outbuilding on the property of the listed residence. The CS observed the marijuana growing in potted soil under active lighting designed to promote plant growth.

As the majority opinion of the Court of Appeals restates, a magistrate's determination of probable cause will not be reversed absent a showing that the judge abused his or her discretion. State v. Condon, 72 Wn. App. 638, 642, 865 P.2d 521 (1993).

Great deference is accorded the magistrate's determination, as well. State v. Griffith, 129 Wn. App. 482, 487, 120 P.3d 610 (2005); Aguilar v. Texas, 378 U.S. 108, 111, 84 S. Ct. 1509, 12 L. Ed. 723 (1964), *overruled on other grounds by* United States v. Salvucci, 448 U.S. 83, 100 S. Ct. 2547, 65 L. Ed. 2d 619 (1980); State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). This is particularly so, as the

Court of Appeals observed, because search warrant affidavits are often prepared on short notice, and without the assistance of attorneys. State v. Patterson, 83 Wn.2d 49, 57-58, 515 P.2d 496 (1973).

The test for sufficiency of the information contained in an affidavit was set forth by the Court of Appeals in State v. Clay, 7 Wn. App. 631, 637, 501 P.2d 603 (1972): “The support for issuance of a search warrant is sufficient if, on reading the affidavits, an ordinary person would understand that a violation existed and was continuing at the time of the application.”

Any doubts as to the existence of probable cause will be resolved in favor of the warrant. State v. J-R Distributors, 11 Wn.2d 764, 774, 765 P.2d 281 (1988); State v. O’Connor, 39 Wn. App. 113, 123, 692 P.2d 208 (1984); State v. Wolcott, 72 Wn.2d 959, 962, 435 P.2d 994 (1967) (citations omitted).

It is well-established in Washington that affidavits for search warrants are to be tested in a commonsense manner rather than hypertechnically, State v. Jackson, 150 Wn.2d 251, 265, 76 P.3d 217 (2003); State v. Partin, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977).

The issuing magistrate is “entitled to make reasonable inferences from the facts and circumstances set out in the affidavit.” State v. Maddox, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004).

In Partin, this Court restated that rule that the underlying facts alleged in an affidavit must be current, not remote in time, and sufficient to justify the magistrate's conclusion that the property sought is probably on the premises to be searched, but went on to hold that the facts presented there were sufficient to support the judge's issuance of a warrant. 88 Wn.2d at 904, *citing* Rosencranz v. United States, 356 F.2d 310, 318 (1st Cir. 1966).

Partin is particularly applicable given the facts present here, as the detective in that case provided this information to the issuing judge:

Your Honor, based upon information I received on this date, 1-3-75, from a reliable informant, I have reason to believe that marijuana is being kept in the residence of 221 East Oak Street. This is the home of Arthur Partin, also the gathering place for members of the Chosen Wheels Motorcycle Club.

Partin, 88 Wn.2d at 903.

The Court found:

“ . . . we observe that although the detective in this case did not provide the magistrate with a specific date on which the informant saw the marijuana at the Oak Street residence, he stated that he had received the information that day (the day the warrant was issued) and based thereon, he had reason to believe marijuana was being kept at the house *at that time*. Thus, the magistrate had a reference point by which to determine the current status of the information.

Id., at 904-05, (emphasis in the original).

Here, the statement contained in the affidavit, when read in a commonsense manner supports a logical inference that the confidential source observed the marijuana being grown, contemporaneously with the communication between the source and the detective. In tortuously parsing the language in order to determine whether there were any other possible interpretations, the trial court engaged in just the type of hypertechnical reading disfavored by the authorities, thus failing to give the appropriate deference to the issuing magistrate.

Indeed, a marijuana grow operation is “hardly a ‘now you see it, now you don’t’ event.” In determining whether probable cause exists, a magistrate may look at all the circumstances, including the nature and scope of the suspected criminal activity. State v. Payne, 54 Wn. App. 240, 246, 773 P.2d 122, *review denied*, 113 Wn.2d 1019 (1989) *citing State v. Petty*, 48 Wn. App. 615, 621, 740 P.2d 879, *review denied* 109 Wn.2d 1012 (1987).

The issuing did not abuse his discretion in drawing a logical inference that marijuana was being grown at the time the detective received the information contained in the affidavit.

IV. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the decision of the Court of Appeals.

Respectfully submitted this 25th day of October, 2011.



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