SUPREME COURT NO. 96819-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARVIN BRANHAM,

Petitioner.

ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS,
DIVISION TWO

Court of Appeals No. 50449-9-II
Clallam County No. 15-1-00231-6

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, MARVIN BRANHAM, by and through his attorney, CATHERINE E. GLINSKI, requests the relief designated in part B.

B. COURT OF APPEALS DECISION

Branham seeks review of the January 3, 2019, unpublished decision of Division Two of the Court of Appeals affirming his convictions and sentence.

C. ISSUE PRESENTED FOR REVIEW

Branham was convicted of possession of methamphetamine with intent to deliver based on evidence seized from his vehicle pursuant to a search warrant. The search warrant affidavit detailed two transactions with an informant in Branham's home 11 weeks earlier, but it contained no facts connecting the vehicle to be searched with any criminal activity or with the evidence to be seized. Where the affidavit does not contain facts to establish a reasonable inference that evidence of illegal drug activity would be found in Branham's vehicle at the time the warrant issued, must evidence seized pursuant to the warrant be suppressed?

D. STATEMENT OF THE CASE

On June 12, 2015, Detective Brian Knutson applied for a warrant to search Marvin Branham's residence, stating he believed there was probable cause to believe delivery of a controlled substance

(methamphetamine) had been or was about to be committed on the premises. CP 61. In the probable cause narrative in the warrant affidavit, Knutson explained that he started working with an informant on March 19, 2015. The informant had a considerable criminal history which called the informant's credibility into question, so Knutson required the informant to check in with the sheriff's office three times a day and complete numerous controlled buys. CP 62.

The informant named Branham as a methamphetamine dealer in the area, saying the informant had been friends with Branham for about ten years and Branham had been dealing methamphetamine for three to four years. CP 63. The informant told Knutson that Branham gets his resupply of methamphetamine once a week, and the informant had personally accompanied Branham to Tacoma about ten times between August 2014 and February 2015 to resupply. CP 63. The informant described Branham's residence and address and said Branham usually conducts methamphetamine deals from within his residence. The informant said Branham keeps his methamphetamine supply in a blue Tupperware container and usually has about one pound of methamphetamine on him at any time. CP 63. The informant said that Branham works at an auto shop and does not sell methamphetamine while

he is at work. CP 63. The informant identified several vehicles that Branham owns or uses. CP 63-64.

Knutson had the informant conduct controlled buys of methamphetamine from Branham on March 25 and March 26, 2015. Both transactions occurred at Branham's residence. CP 64-66. On March 29, 2015, the informant attempted to purchase methamphetamine from Branham, but Branham said he did not have any methamphetamine to sell. CP 66. The informant again attempted to purchase methamphetamine from Branham on April 9, 2015. Branham was smoking methamphetamine and told the informant to take a hit, but the informant declined. Branham refused to sell the informant methamphetamine. CP 67.

On June 12, 2015, the informant told Knutson that the informant had stolen some methamphetamine from Branham's residence about two weeks earlier and sold it, because Branham owed the informant money. The informant talked to Branham about the theft, and everything was fine. CP 67.

Knutson asked for authority to search Branham's residence for methamphetamine, drug paraphernalia, and evidence of drug dealing, saying there was probable cause to believe such evidence would be found. CP 67-69. The search warrant was issued. CP 60.

In a second affidavit, Knutson sought authority to search a white Cadillac used by Branham for evidence of delivery of a methamphetamine. CP 73. Knutson repeated the information in the first affidavit and also explained that he had asked the informant what type of vehicle Branham was driving. The informant said that Branham's Toyota truck was recently stolen and he was now driving the white Cadillac. Knutson said that on June 10, 2015, he drove by Branham's workplace and saw the Cadillac parked out front. Later that day another detective saw Branham drive the Cadillac from his workplace to his home. Based on this information Knutson felt there was probable cause to believe Branham had dominion and control over the Cadillac and requested authority to search it subsequent to Branham's arrest. CP 81. The court issued the warrant to search the Cadillac. CP 85.

Branham was charged with two counts of delivery of methamphetamine based on the controlled buys and one count of possession with intent to deliver methamphetamine based on the evidence found in the Cadillac. CP 90-93. He moved to suppress the evidence seized pursuant to the warrant, arguing that the information regarding the controlled buys was too stale to support a finding of probable cause that evidence of a crime would be found in his residence or vehicle. He also argued there was no probable cause to search the Cadillac because the

alleged facts did not establish a nexus between the vehicle and the suspected criminal activity. CP 50-59.

After hearing argument from the parties and reviewing the warrant affidavits, the court ruled that the warrants were supported by probable cause and denied the motion to suppress. RP 15-47; CP 35-38. Branham thereafter waived his right to a jury trial and entered a stipulation as to facts set forth in police reports and probable cause statements. He stipulated that the substance found in eight baggies in the trunk of the Cadillac was methamphetamine and that he possessed that methamphetamine with intent to deliver. CP 32-34. Based on the stipulated facts the court found Branham guilty of possession of methamphetamine with intent to deliver. CP 29-31.

Branham appealed, arguing that the search warrant was not supported by probable cause, and evidence seized pursuant to the unlawfully issued warrant should be suppressed. The Court of Appeals affirmed.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THE COURT OF APPEALS' DECISION CONFLICTS WITH PRIOR DECISIONS AND INVOLVES A SIGNIFICANT ISSUE OF CONSTITUTIONAL LAW.

A search warrant may only issue on a showing of probable cause. U.S. Const. amend, IV; Wash. Const. art. I, § 7. The warrant must be

supported by an affidavit which identifies particularly the place to be searched and the persons or things to be seized. *Id*. On appeal the validity of a search warrant is reviewed de novo. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). Issuance of a warrant is reviewed for abuse of discretion. Deference is given to the magistrate's probable cause decision, but that deference is not unlimited. *State v. Lyons*, 174 Wn.2d 354, 362, 275 P.3d 314 (2012). The reviewing court "cannot defer to the magistrate where the affidavit does not provide a substantial basis for determining probable cause." *Id*. at 363.

"To establish probable cause, the affidavit must set forth sufficient facts to convince a reasonable person of the probability the defendant is engaged in criminal activity and that evidence of criminal activity can be found at the place to be searched." *Id*. at 359. "Further, these facts must be current facts, not remote in point of time, and sufficient to justify a conclusion by the magistrate that the property sought is probably on the person or premises to be searched at the time the warrant is issued." *State v. Spencer*, 9 Wn. App. 95, 97, 510 P.2d 833 (1973). "The facts set forth in the affidavit must support the conclusion that the evidence is probably at the premises to be searched at the time the warrant is issued." *Lyons*, 174 Wn.2d at 360 (citing *State v. Partin*, 88 Wn.2d 899, 903, 567 P.2d 1136 (1977)).

It is not enough for the warrant affidavit "to set forth that criminal activity occurred at some prior time. The facts or circumstances must support the reasonable probability that criminal activity was occurring at or about the time the warrant was issued." *State v. Higby*, 26 Wn. App. 457, 460, 613 P.2d 1192 (1980). Tabulation of the intervening number of days is one factor to be considered, along with the nature and scope of the suspected criminal activity. *Id*. at 460-61. The affidavit must raise a reasonable inference that the evidence is currently to be found at the place to be searched. *State v. Smith*, 60 Wn. App. 592, 602, 805 P.2d 256 (1991); *see also State v. Maddox*, 152 Wn.2d 499, 506, 98 P.3d 1199 (2004) (information in affidavit not stale if it "supports a commonsense determination that there is continuous and contemporaneous possession of the property intended to be seized.")

The Court of Appeals concluded that "[g]iven the statements in the affidavit establishing the ongoing nature of Branham's criminal activity, the trial court did not err when it concluded that the information in the search warrant affidavit was not stale." Opinion, at 7. This conclusion conflicts with prior decisions of the Court of Appeals.

In *Higby*, the Court of Appeals held that the information presented in a warrant affidavit was too remote to establish probable cause to believe marijuana was on the premises at the time of the search. *Higby*, 26 Wn.

App. at 459. The affidavit stated that an informant told police he had purchased marijuana at Higby's home about two weeks prior to the affidavit, police observed a considerable amount of two- to three-minute visits to the residence, and an informant reported seeing the packaging and sale of ground leafy vegetable matter by Higby in her home six months earlier. *Id*. at 460. This information was insufficient to establish probable cause to search two weeks after the last reported sale of marijuana. *Id*. at 461 (citing *Spencer*, 9 Wn. App. at 97 (two separate controlled buys, the last 61 days prior to warrant, insufficient to establish probable cause)). By contrast, in *State v. Hall*, 53 Wn. App. 296, 766 P.2d 512 (1989), there was probable cause to search the defendant's residence based on information that an extensive grow operation had been observed two months earlier, because it was reasonable to believe the grow operation was still in existence. *Hall*, 53 Wn. App. at 300.

Here, the warrant affidavit describes two controlled buys of methamphetamine occurring at Branham's residence 11 weeks earlier. CP 64-66. Two subsequent attempts at controlled buys were unsuccessful, with Branham saying he did not have any methamphetamine to sell and declining to sell to the informant. CP 66-67. The affidavit also indicates that the informant claimed to have accompanied Branham on trips to Tacoma to pick up his supply of methamphetamine. These trips were

even more remote in time, and there was no corroboration of this information. CP 63. The affidavit contains the informant's description of Branham's residence and where Branham stores methamphetamine within the residence, and his explanation that Branham conducts methamphetamine deals from his residence but not at his work place. CP 63. In addition, the affidavit indicates that the informant claimed to have stolen methamphetamine from Branham's residence about two weeks earlier. Again, there was no corroboration of this claim. CP 67.

A second warrant affidavit repeats all the above information and also identifies a white Cadillac currently being used by Branham. The informant had said Branham started using the Cadillac recently when his truck was stolen, but no specific date was given. Officers had observed Branham with the truck within two days of the warrant affidavit. CP 81.

These affidavits fail to set forth facts to support a reasonable probability that criminal activity was occurring at the time the warrant was issued. While evidence of a marijuana grow operation would be expected to be present weeks after it was observed, given the time it takes for plants to mature, the affidavits in this case asserted that Branham resupplied weekly when he was dealing. Thus, the controlled buys occurring 11 weeks prior to the affidavits were too remote in time to support probable cause to believe evidence of methamphetamine delivery would currently

be found. The only information that Branham had resupplied at any point after the controlled buys was the uncorroborated claim from the informant that he had stolen methamphetamine from Branham and sold it, but even that information was at least two weeks old. The affidavits do not set forth facts which support the conclusion that the evidence being sought was probably at the premises to be searched at the time the warrants were issued. This Court should grant review. RAP 13.4(b)(2).

Even if the information about the controlled buys conducted in Branham's residence was not too remote in time, however, the warrant affidavits did not establish probable cause, because there was no nexus between the evidence of drug activity sought and the white Cadillac. "'[P]robable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched.'" *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (quoting *State v. Goble*, 88 Wash.App. 503, 509, 945 P.2d 263 (1997)).

The affidavits state that the informant said Branham went to Tacoma weekly to pick up supplies of methamphetamine, and he had accompanied Branham about ten times between August 2014 and February 2015. CP 63. The second affidavit indicates that the informant said Branham had recently been using the white Cadillac because his truck

had been stolen, and officers had observed Branham using the Cadillac in the past two days. CP 81. There was no information as to how long Branham had been using that vehicle and no observation of any drug activity in that car, however.

The Court of Appeals concluded that it was reasonable to infer that if Branham transported his drug supply on a weekly basis, there was a nexus between the vehicle he was currently driving and the drug activity. Opinion, at 8. A finding of probable cause must be grounded in facts specifically tying the items to be seized to the place to be searched, however. *Thein*, 138 Wn.2d at 147. Neither affidavit in this case contained any specific facts tying the white Cadillac to the suspected criminal activity or the evidence to be seized. The only specific facts about the Cadillac contained in the affidavits are that Branham started driving it "recently" after his truck was stolen, and officers had observed him drive it home from work two days prior to the warrant affidavit. Neither these facts nor the circumstances surrounding the informant's past interactions with Branham give rise to a reasonable inference that evidence of criminal activity would be found in the Cadillac at the time the warrant was issued. "Absent a sufficient basis in fact from which to conclude evidence of illegal activity will likely be found at the place to be searched, a reasonable nexus is not established as a matter of law." *Thein*,

138 Wn.2d at 147. The Court of Appeals' expansion of the nexus concept presents a significant constitutional question which this Court should address. RAP 13.4(b)(3).

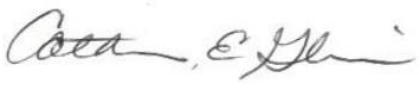
F. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse Branham's convictions and sentence.

DATED this 4th day of February, 2019.

Respectfully submitted,

GLINSKI LAW FIRM PLLC



CATHERINE E. GLINSKI
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Certification of Service by Mail

Today I caused to be mailed a copy of the Petition for Review in *State v. Marvin Branham,* Court of Appeals Cause No. 50449-9-II, as follows:

Marvin Branham/DOC#826102
PO Box 522
Port Angeles, WA 98362

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Catherine E. Glinski
Done in Manchester, WA
February 4, 2019

Filed
Washington State
Court of Appeals
Division Two

January 3, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MARVIN EMILE BRANHAM, Appellant.	No. 50449-9-II UNPUBLISHED OPINION

SUTTON, J. — Marvin Emile Branham appeals his stipulated facts bench trial conviction for possession of methamphetamine with intent to deliver. He argues that the trial court erred when it denied the motion to suppress the evidence found in his vehicle because the information in the search warrant affidavit was stale and the search warrant affidavit failed to establish a nexus between the evidence sought and the vehicle searched. We affirm.[1]

FACTS

I. SEARCH WARRANT

On March 20, 2015, a confidential informant (CI) informed Clallam County Deputy Sheriff Brian D. Knutson that Branham had been selling methamphetamine. CP at 62-63, 71. On June

[1] In his Statement of Additional Grounds for Review, Branham also asks that we exercise our discretion and not impose appellate costs. If a cost bill is filed, Branham may then object, and a commissioner of this court may determine whether imposition of costs is warranted. RAP 14.2. Accordingly, we do not address whether to impose appellate costs at this time.

12, Deputy Knutson requested search warrants authorizing the searches of Branham's residence[2] and a white Cadillac associated with Branham.

In the affidavit for the search warrant for the vehicle, Deputy Knutson stated that on February 26, 2015, he contacted a person who agreed to act as a CI for the sheriff's office. When Deputy Knutson interviewed the CI on March 20, the CI, who had known Branham for approximately 10 years, stated that Branham had been selling methamphetamine in Port Angeles for three or four years. The CI told Deputy Knutson that Branham resupplied his stock of methamphetamine weekly. The CI further stated that between August 2014 and February 2015 he or she had accompanied Branham to Tacoma more than 10 times to pick up methamphetamine. The CI further stated that on February 13, he or she accompanied Branham to Tacoma to purchase $15,000 worth of methamphetamine.

The CI told Deputy Knutson where Branham lived and stated that Branham usually sold his drugs out of his trailer. The CI reported that he or she had seen Branham sell methamphetamine to someone on or about February 22, 2015. The CI also reported having personally purchased methamphetamine from Branham.

The CI further stated that Branham worked at "KNB Auto" and that Branham did not sell drugs at work. Clerk's Papers (CP) at 75. The CI also stated that Branham owned several vehicles and would sometimes take vehicles as payment for drugs. Deputy Knutson listed four different cars that Branham owned, but noted that this list was not exclusive. This list did not include a white Cadillac.

[2] Branham does not challenge the search of his residence.

In addition to describing the information that he had gathered during the March 20 interview, Deputy Knutson described sending the CI to Branham's workplace on March 24, 2015 to arrange to purchase methamphetamine on March 25. The CI subsequently purchased methamphetamine from Branham at Branham's residence on March 25 and on March 26. When the CI attempted to purchase more on March 29, Branham said that he did not have any to sell. And when the CI attempted to purchase more on April 9, Branham refused to sell the CI any methamphetamine after the CI declined Branham's invitation to join him in smoking some methamphetamine.

After setting out these facts, Deputy Knutson stated:

> I am requesting the authority to search Marvin Branham's trailer for methamphetamine because I believe there is sufficient probable cause that Branham currently delivers and uses methamphetamine. For instance, on 06/12/15 I talked to [the CI] and they said about two weeks ago they stole two ounces of methamphetamine from Branham while at Branham's trailer. [The CI] said the street value of the two ounces of methamphetamine was about $500. [The CI] said they sold the methamphetamine and made a profit of $1,000. [The CI] said although they took the methamphetamine from Branham, Branham owes them money from past dealings regarding vehicles they had traded and/or sold to one another. [The CI] said they have since talked to Branham and everything is "fine".
>
> . . . .
>
> I am requesting the authority to search a vehicle that is known by [the CI] to belong to Branham. On 06/12/15, I talked to [the CI] and I asked [the CI] what kind of vehicle Branham was driving. [The CI] said Branham recently had his white Toyota truck stolen and is now driving a white Cadillac. On 06/10/15, I drove by Branham's work . . . and saw a white 1995 Cadillac Fleetwood 4-Door . . . parked in front of the business. I know from previous contacts with Branham, that Branham parks his vehicle(s) in front of [his work] while attending work. Furthermore, on 06/10/15 at about 1715 hours, Detective Grall from the Olympic Peninsula Narcotics Enforcement Team (OPNET) saw Branham drive the white Cadillac from his work . . . to his home. . . . Despite the white Cadillac having a registered owner other than Branham himself, I have probable cause to believe that Branham has dominion and control of the vehicle based on the above information

> and I am requesting the authority to search the vehicle subsequent to Branham's arrest.

CP at 79, 81.

A judge issued search warrants for Branham's residence and the white Cadillac. Officers found eight baggies of methamphetamine inside the Cadillac's trunk.[3]

II. PROCEDURE

The State charged Branham with unlawful possession of methamphetamine with intent to manufacture or deliver and two counts of unlawful delivery of methamphetamine. Branham moved to suppress the evidence found during the search of his vehicle.

In his motion to suppress, Branham argued that probable cause did not support the search warrant related to the vehicle because the information in the supporting affidavit was stale and because the affidavit did not establish a nexus between the vehicle and the suspected criminal activity. After hearing argument, the trial court denied the motion to suppress.

In its written memorandum opinion and order, the trial court stated,

> Although the informant's last successful purchase of methamphetamine from Mr. Branham was in March 2015, given the fact that Mr. Branham had been selling methamphetamine over the course of 3-4 years, combined with the facts that he had methamphetamine in his home on April 9, 2015, as well as on approximately May 30, 2015, the warrants issued weeks later—on June 12, 2015—are not stale. Given the chronicity of Mr. Branham's methamphetamine sales, it is not unreasonable to conclude that if he had methamphetamine in April and late May of 2015 that he likely continued to have methamphetamine in early June 2015.
>
> Although Mr. Branham is correct that there is no evidence specifically linking his white Cadillac with illegal activity, there is ample evidence that vehicles play an integral role in his illegal drug activities. For example, the evidence from the informant is that in the past Mr. Branham routinely drove a white truck to Tacoma to resupply his methamphetamine. Then Mr. Branham's truck was stolen

[3] The officers did not find any evidence in the residence.

> and he began driving the Cadillac. It is not unreasonable to conclude that since Mr. Branham used his truck for illegal drug activities—and then his truck was stolen and he began driving the Cadillac—that the Cadillac is likely to be used for the same purposes the truck was used for.
>
> The court concludes the warrants are not stale and are supported by probable cause.

CP at 37-38.

After the trial court denied the motion to suppress, Branham waived his right to a jury trial and proceeded to a stipulated facts bench trial. The trial court found Branham guilty of unlawful possession of methamphetamine with intent to deliver. Branham appeals. CP at 13.

ANALYSIS

Branham argues that the trial court erred when it denied the motion to suppress the evidence found in vehicle because (1) the information in the search warrant affidavit was stale, and (2) the search warrant affidavit failed to establish a nexus between the evidence sought and the vehicle. We disagree.

I. LEGAL PRINCIPLES

We generally review the validity of a search warrant for an abuse of discretion, giving great deference to the issuing judge. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). But when a trial court assesses a search warrant affidavit for probable cause at a suppression hearing, we review the trial court's conclusion on suppression de novo. *Neth*, 165 Wn.2d at182.

"A search warrant may issue only upon a determination of probable cause, based upon facts and circumstances sufficient to establish a reasonable inference that criminal activity is occurring or that contraband exists at a certain location." *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995), *overruled on other grounds by In re Detention of Petersen*, 145 Wn.2d 789, 801, 42 P.3d

952 (2002). "'[P]robable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched.'" *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999) (quoting *State v. Goble*, 88 Wn. App. 503, 509, 945 P.2d 263 (1997)).

When examining the trial court's conclusion, we examine "'whether the qualifying information as a whole amounts to probable cause.'" *State v. Emery*, 161 Wn. App. 172, 202, 253 P.3d 413 (2011) (quoting *Petersen*, 145 Wn.2d at 800), *aff'd*, 174 Wn.2d 741, 278 P.3d 653 (2012). We consider only the information that was available to the issuing judge, and like the trial court, our review "is limited to the four corners of the affidavit supporting probable cause." *Neth*, 165 Wn.2d at182 (citing *State v. Murray*, 110 Wn.2d 706, 709-10, 757 P.2d 487 (1988); *Wong Sun v. United States*, 371 U.S. 471, 481-82, 83 S. Ct. 407, 414, 9 L.Ed.2d 441 (1963); *State v. Amerman*, 84 Md. App. 461, 581 A.2d 19 (1990)). "'It is only the probability of criminal activity, not a prima facie showing of it, that governs probable cause. The [issuing judge] is entitled to make reasonable inferences from the facts and circumstances set out in the affidavit.'" *Emery*, 161 Wn. App. at 202 (alteration in original) (quoting *State v. Maddox*, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004)).

Additionally, we examine the existence of probable cause on a case-by-case basis. *State v. Thein*, 138 Wn.2d at 149. Individual facts that would not support probable cause when standing alone can support probable cause when viewed together with other facts in the search warrant affidavit. *See State v. Garcia*, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992). The application for a search warrant must be judged in the light of common sense, resolving all doubts in favor of the warrant. *State v. Chenoweth*, 160 Wn.2d 454, 477, 158 P.3d 595 (2007); *Maddox*, 152 Wn.2d at 505-06.

II. STALENESS ARGUMENT

Branham first contends that the search warrant related to the vehicle was improper because the information in the search warrant affidavit was stale. We disagree.

Whether information in a search warrant affidavit is stale depends on the circumstances of each case. *State v. Lyons*, 174 Wn.2d 354, 361, 275 P.3d 314 (2012). Some length of time naturally passes between observations of suspected criminal activity and the presentation of an affidavit to an issuing magistrate or judge. *Lyons*, 174 Wn.2d at 360. But when the passage of time is so prolonged that it is no longer probable that a search will uncover evidence of criminal activity, the information underlying the affidavit is deemed stale. *Lyons*, 174 Wn.2d at 360-61. In addition to the passage of time, staleness depends on the nature and scope of the alleged criminal activity, the length of the activity, and the type of property to be seized. *See Maddox*, 152 Wn.2d at 506.

Here, the trial court correctly considered the nature and scope of the alleged criminal activity. Although the CI's last successful purchase of methamphetamine from Branham took place about three months before the search warrant was issued, the search warrant affidavit related to the vehicle disclosed that Branham's drug dealing was not just an isolated event. Instead, Branham's drug dealing was a continuing activity that Branham had been engaged in for three or four years. And even though there may have been instances when Branham did not have drugs immediately available, the search warrant affidavit stated that Branham replenished his supply weekly. Given the statements in the affidavit establishing the ongoing nature of Branham's criminal activity, the trial court did not err when it concluded that the information in the search warrant affidavit was not stale.

III. NEXUS

Branham next argues that the search warrant was improper because the affidavit did not establish a nexus between the drug activity and the Cadillac. Again, we disagree.

The CI told Deputy Knutson that Branham made weekly trips to replenish his supply of methamphetamine and that Branham was currently driving the Cadillac. Resolving all doubts in favor of the warrant, it was a reasonable inference to conclude that if Branham transported his drug supply between Tacoma and his home on a weekly basis that there was a nexus between the vehicle Branham was currently driving, the Cadillac, and his drug activity.

In his Statement of Additional Grounds, Branham further argues that there was no probable cause to search the Cadillac because (1) there was testimony at trial that he did not sell drugs at work, (2) he had borrowed the Cadillac only to travel to and from work and that was the only activity the detective witnessed, and (3) he had only had the Cadillac for less than two days. But the mere fact that Branham may not have sold drugs at work does not necessarily mean that he did not transport drugs in his car. Additionally, there was no evidence at the suppression hearing suggesting that Branham was not using the Cadillac as his personal vehicle. As noted above, the CI told Deputy Knutson that Branham had in the past transported drugs in his car and that he was currently using the Cadillac because his usual vehicle had been stolen. And even presuming that Branham had only been using the Cadillac for less than two days, it is not unreasonable to presume that this would have given Branham time to use the Cadillac to transport drugs. Accordingly, the trial court did not err when it found that there was a nexus between the vehicle and the alleged illegal criminal activity.

Because the trial court did not err when it found that the information in the affidavit supporting the search warrant was not stale and that there was a nexus between the vehicle and the illegal activity, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.

SUTTON, J.

We concur:

, A.C.J.

LEE, A.C.J.

Bjorgen, J.

BJORGEN, J.

GLINSKI LAW FIRM PLLC

February 04, 2019 - 11:14 AM

Transmittal Information

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Appellate Court Case Title:	State of Washington, Respondent v. Marvin E. Branham, Appellant
Superior Court Case Number:	15-1-00231-6

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