

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellant,

v.

JOEL GONZALEZ,
Appellee.

No. 2 CA-CR 2016-0136
Filed November 14, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20151826001
The Honorable Scott Rash, Judge

REVERSED

COUNSEL

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Counsel for Appellant

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Counsel for Appellee

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 The state appeals the trial court’s order granting appellee Joel Gonzalez’s motion to suppress. The court based its ruling, in part, on the conclusion that the search warrant for Gonzalez’s residence lacked probable cause. We disagree and reverse for the reasons that follow.

Factual and Procedural Background

¶2 We consider only the sworn testimony presented to the magistrate at the time the warrant was issued. *See State v. Jung*, 19 Ariz. App. 257, 258-59, 506 P.2d 648, 649-50 (1973); *State v. Greenleaf*, 11 Ariz. App. 273, 274, 464 P.2d 344, 345 (1970). The search warrant affidavit here disclosed that on April 8, 2015, law enforcement officers with the Drug Enforcement Agency (DEA) and Pima County Sheriff’s Department were conducting surveillance at a shopping center when they observed a man, F.M., “acting suspiciously.” Over the course of approximately thirty minutes, he lingered outside one store, drove to a nearby store, waited in its parking lot, and then returned to the first store’s parking lot, where he parked his pickup truck. F.M. entered the store for several minutes. He then emerged, entered the passenger side of a Chevrolet Impala sedan driven by another person, and rode away from the shopping center and the police surveillance operation.

¶3 Officers next observed F.M. return to the shopping center as a passenger in the same Impala, carrying a backpack. Upon arriving at the parking lot, the driver did not take F.M. directly to his truck. Instead, the car proceeded down several aisles in the parking lot as “both occupants look[ed] around for possible law enforcement . . . presence.” The Impala finally stopped in an adjacent aisle to allow F.M. to exit the vehicle and walk to his truck.

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Separate officers then followed both vehicles as they left the parking lot.

¶4 A subsequent stop and consensual search of F.M.'s truck revealed that the backpack contained \$133,470 in U.S. currency. F.M. admitted to officers that he was being paid a commission to deliver the cash to Mexico. F.M. claimed this was his third such transaction, and the second transaction with the driver of the Impala. F.M. described this driver as a heavysset Hispanic male of average height.

¶5 On this occasion, according to F.M., the driver had instructed him to keep his head down and not observe anything as they proceeded to a house about fifteen minutes from the shopping center. Once there, F.M. accompanied the driver through the garage of the house and into a bedroom, where F.M. counted and verified \$100,000 in currency and placed it inside the backpack. The driver then put several additional bundles of cash into the backpack and instructed F.M. to take those as well. On the return trip to the shopping center, the driver again instructed F.M. to keep his head down.

¶6 After the Impala had dropped off F.M., other officers followed the vehicle away from the shopping center and saw it park in the driveway of a nearby house. Police learned that both the Impala and the house were owned by Gonzalez. An additional vehicle owned by Gonzalez was also registered to that address and parked on the street, even though the house had an attached garage. Gonzalez matched F.M.'s general physical description of the driver of the Impala. Moreover, government records revealed that Gonzalez had crossed into the United States from Mexico approximately one week earlier, and a "Border Crossing picture" allowed the police to identify Gonzalez as the person they saw driving the Impala.

¶7 Based on all this information, a detective with the sheriff's department applied for a telephonic search warrant for Gonzalez's residence. The affidavit stated that the detective had a total of nineteen years' experience as a police officer, with nearly four years in his current assignment as "a Task Force Officer for the

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DEA and the Border Area Narcotic Groups Task Force 2.” The detective sought to search the house for the “fruits” and “instrumentalities” of money laundering pursuant to A.R.S. § 13-2317. Among the specific items sought were “[d]rug related or other illicitly acquired monies,” records “tending to show the . . . secreting, transfer or expenditure of monies derived from . . . narcotics trafficking,” illicit drugs or evidence of drug transfers, and any weapons used in furtherance of “narcotics related activities.” The magistrate found probable cause for issuing the search warrant.

¶8 Based on the evidence from the resulting search, an indictment charged Gonzalez with four felony counts, including money laundering, possession of methamphetamine for sale, and possession of a firearm during the commission of a drug offense. He moved to suppress the evidence pursuant to the Fourth Amendment to the United States Constitution and article II, § 8 of the Arizona Constitution. Gonzalez argued, and the trial court found, that the search warrant affidavit provided no basis for concluding that his particular residence was connected to any suspected criminal activity. The court further determined that the affidavit failed to show any connection between money laundering and drug trafficking. The court therefore granted the motion to suppress, rejecting the state’s argument that the good-faith exception should apply. The court described the question as a “tough call” but nonetheless suppressed the evidence because the search warrant was “clearly overbroad for what the officers had any probable cause for suspecting would be found in the residence.”

¶9 On the state’s motion, the trial court subsequently dismissed the charges without prejudice, consistent with *State v. Million*, 120 Ariz. 10, 14-15, 583 P.2d 897, 901-02 (1978), and the state pursued this appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4032(6).

Discussion

Probable Cause

¶10 Our state and federal constitutions generally require that any residential search be authorized by a search warrant that is

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supported by probable cause. *See State v. Hyde*, 186 Ariz. 252, 268, 921 P.2d 655, 671 (1996); *State v. Adamson*, 136 Ariz. 250, 257, 665 P.2d 972, 979 (1983). “Probable cause exists when the facts known to a police officer ‘would warrant a person of reasonable caution in the belief that contraband or evidence of a crime is present.’” *State v. Sisco*, 239 Ariz. 532, ¶ 8, 373 P.3d 549, 552 (2016), quoting *Florida v. Harris*, ___ U.S. ___, ___, 133 S. Ct. 1050, 1055 (2013). In other words, the totality of the circumstances must create a fair probability that evidence of a crime will be found in the place to be searched. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Once issued, a search warrant is presumed to be valid, and a defendant challenging it for a lack of probable cause carries the burden of production below. *Hyde*, 186 Ariz. at 268, 270, 921 P.2d at 671, 673. A magistrate’s finding of probable cause will be upheld whenever there is a substantial basis for it. *Gates*, 462 U.S. at 236; *Hyde*, 186 Ariz. at 272, 921 P.2d at 675. The magistrate’s probable-cause determination is entitled to “great deference” by a reviewing court, *State v. Adams*, 18 Ariz. App. 292, 293, 501 P.2d 561, 562 (1972), and normally “will not be overturned unless it is clearly erroneous.” *State v. Buccini*, 167 Ariz. 550, 555, 810 P.2d 178, 183 (1991).

¶11 Bearing these standards in mind, we agree with two statements made by the trial court regarding the magistrate’s probable-cause determination. First, the court correctly noted that F.M.’s observed activities and the backpack full of cash provided a “[c]lear indication of money laundering.” The crime of money laundering can be committed a number of ways, such as by transactions involving “the proceeds of an offense,” § 13-2317(B)(3), including a racketeering offense such as drug trafficking. *See* A.R.S. §§ 13-2301(D)(4)(b)(xi), 13-2317(B)(1), (2). Surreptitious transfers of large amounts of cash tend to suggest that a person has engaged in money laundering. *Cf. United States v. \$242,484*, 389 F.3d 1149, 1161 (11th Cir. 2004) (en banc) (“A common sense reality of everyday life is that legitimate businesses do not transport large quantities of cash . . . stuffed into packages in a backpack. They don’t, because there are better, safer means of transporting cash if one is not trying to hide it from the authorities.”); *United States v. Hoyland*, 914 F.2d 1125, 1128 (9th Cir. 1990) (“a pattern of cash deposits and exchanges that have no obvious purpose except the avoidance of detection” can be

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factor in establishing probable cause), *overruled on other grounds by Ratzlaf v. United States*, 510 U.S. 135, 136-37 (1994). We therefore agree with the court's further statement that the affidavit here supplied probable cause to search the residence described by F.M. "for currency and evidence of money laundering."

¶12 We disagree with the trial court, however, that the affidavit failed to show that Gonzalez's residence was the same house where the transfer of cash had taken place. In reaching this conclusion, the court did not give appropriate deference to the magistrate's probable-cause determination and appeared to conduct an improper de novo review of the affidavit, *see Gates*, 462 U.S. at 236, thereby abusing its discretion. *See State v. Crowley*, 202 Ariz. 80, ¶ 7, 41 P.3d 618, 621 (App. 2002) (stating suppression rulings reviewed for clear abuse of discretion); *see also Buccini*, 167 Ariz. at 555-56, 810 P.2d at 183-84 (suggesting abuse of discretion occurs by application of incorrect standard); *State v. Mangum*, 214 Ariz. 165, ¶ 6, 150 P.3d 252, 254 (App. 2007) (same).¹

¶13 "Reasonable minds frequently may differ on the question whether a particular affidavit establishes probable cause," *United States v. Leon*, 468 U.S. 897, 914 (1984), and it is not the role of a reviewing court to second-guess a magistrate's decision concerning the weight of the evidence. *Hyde*, 186 Ariz. at 272, 921 P.2d at 675. A substantial basis for a search warrant may exist even when another court would reach a decision contrary to the "original probable cause determination." *Id.* So long as the facts make it "not

¹We assume, without deciding, that an abuse-of-discretion standard of appellate review applies to this aspect of the trial court's ruling. *But see Sisco*, 239 Ariz. 532, ¶ 7, 373 P.3d at 552 ("Whether a magistrate's probable cause determination comports with the Fourth Amendment is a mixed question of law and fact that we review de novo."); *see also State v. Moody*, 208 Ariz. 424, ¶ 62, 94 P.3d 1119, 1140 (2004) ("We review a trial court's ruling on a motion to suppress evidence for an abuse of discretion if it involves a discretionary issue, but review constitutional issues and purely legal issues de novo.") (citations omitted). Our decision would be the same under a less deferential standard of review.

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unreasonable . . . to conclude” that evidence of a crime may be found in a given location, an affidavit provides a “substantial basis” for a search. *State v. McCall*, 139 Ariz. 147, 156-57 & n.2, 677 P.2d 920, 929-30 & n.2 (1983).

¶14 The affidavit here met this standard. It showed, as the trial court acknowledged, that Gonzalez and F.M. had engaged in suspicious activity indicative of money laundering at the shopping center. The investigation by the police, together with F.M.’s admissions, allowed a reasonable conclusion that Gonzalez was both the driver of the Impala and the person who had put \$33,470 in cash in the backpack. In other words, the evidence suggested that Gonzalez had participated directly in money laundering at the house described by F.M.

¶15 The following facts then linked the money-laundering offense to the residence to be searched: the Impala returned directly to the house after the transaction; the house was located near the shopping center that the men had used as a staging area; Gonzalez owned the Impala, the house, and another vehicle registered to that address; Gonzalez tried to conceal the exact location of the house from F.M.; Gonzalez had participated in a similar money-laundering transaction with F.M. in the past; and Gonzalez recently visited the country to which the cash was directed. The totality of these circumstances allowed a reasonable inference that Gonzalez’s house was the same house where the transfer of cash had occurred and where more cash and evidence of money laundering was likely to be found. Accordingly, there was a substantial basis for the magistrate’s conclusion that probable cause existed to search this location for fruits and instrumentalities of the crime of money laundering defined by § 13-2317.

¶16 That another house could conceivably have been used to transfer the money, as the trial court observed, did not undermine the magistrate’s determination. Probable cause requires only a fair probability; it is a lesser standard than even a preponderance of the evidence and therefore allows the possibility of reasonable mistakes. *See Sisco*, 239 Ariz. 532, ¶ 8, 373 P.3d at 552; *State v. Pederson*, 102 Ariz. 60, 66, 424 P.2d 810, 816 (1967). Furthermore, to the extent the trial court regarded the issue as a “tough call,” our supreme court

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has instructed that “[c]lose cases should be resolved by giving preference to the validity of warrants.” *Hyde*, 186 Ariz. at 272, 921 P.2d at 675.

¶17 The principal cases the trial court relied on at the suppression hearing are distinguishable insofar as the affidavits therein either did not establish a connection between a criminal suspect and the house identified in the search warrant, *United States v. Hove*, 848 F.2d 137, 139-40 (9th Cir. 1988), or did not provide a “nexus between the criminal activity and the place[] to be searched.” *United States v. Ramos*, 923 F.2d 1346, 1351 (9th Cir. 1991), *overruled on other grounds by United States v. Ruiz*, 257 F.3d 1030, 1032 (9th Cir. 2001). Here, in contrast, the facts showed the crime of money laundering had occurred within a nearby residence, and the police identified this suspected residence by establishing Gonzalez’s identity as the owner and driver of the Impala as well as the owner of the house where it eventually stopped. Unlike in *Ramos*, evidence of a crime was loaded into the Impala “during [Gonzalez’s] stewardship of the vehicle,” and he was “actually implicated in the enterprise” of money laundering. 923 F.2d at 1352.

Good-Faith Exception

¶18 Given that probable cause existed to search Gonzalez’s house for evidence of money laundering, we need not decide whether the breadth of the search warrant was proper or whether the affidavit established probable cause to believe that many of the particular items listed in the warrant would be found at the residence. Instead, we examine the state’s contention, which it raised below, that suppression was inappropriate in light of the good-faith exception discussed in *Leon*.

¶19 “[I]n the ordinary case, an officer cannot be expected to question the magistrate’s probable-cause determination’ because ‘[i]t is the magistrate’s responsibility to determine whether the officer’s allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment.’” *Messerschmidt v. Millender*, ___ U.S. ___, ___, 132 S. Ct. 1235, 1245 (2012), *quoting Leon*, 468 U.S. at 921 (alterations in *Messerschmidt*). The exclusionary rule is not designed to punish

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police officers for a magistrate's mistake. *Davis v. United States*, 564 U.S. 229, 246 (2011). Hence, compliance with a search warrant will normally establish good-faith conduct by the police and prevent the exclusion of evidence, *Leon*, 468 U.S. at 921, unless one of four recognized exceptions applies. *Hyde*, 186 Ariz. at 273, 921 P.2d at 676, citing *Leon*, 468 U.S. at 923.

¶20 The trial court found three of these exceptions to the good-faith rule to be inapplicable. The court determined the search warrant was facially valid, the police made no false statements or material omissions to obtain it, and the magistrate did not abandon his judicial role in issuing the warrant. *See id.* The court concluded suppression was required, however, because the warrant was "based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" *Id.*, quoting *Leon*, 468 U.S. at 923. When making this assessment, a court must apply an objective standard of reasonableness, *Leon*, 468 U.S. at 919 n.20, 922, to determine whether a reasonably well-trained police officer could have harbored a belief in the existence of probable cause. *Id.* at 926.

¶21 The trial court here correctly noted that the search warrant affidavit failed to provide any explicit link between money laundering and drug trafficking or weapons. Although an officer's knowledge, training, and experience ordinarily supply such a connection, *see, e.g., Hoyland*, 914 F.2d at 1127-28, the detective provided no such information to the magistrate here. In light of this omission, "[t]he affidavit is not a hallmark of clarity, nor should it serve as a model for future police action." *State v. Richardson*, 22 Ariz. App. 449, 451, 528 P.2d 641, 643 (1974). A proper affidavit would clearly state and support the reasons why the commission of one crime suggests the commission of another, and it would explain why there "is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978); *see Messerschmidt*, ___ U.S. at ___, 132 S. Ct. at 1246 (recognizing "[e]vidence of one crime is not always evidence of several," yet it might be so under circumstances of particular case). But we do not

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find suppression appropriate based on the shortcoming here for at least two reasons.

¶22 First, the general nature of a money-laundering offense could cause a police officer to reasonably believe the search warrant here was valid in its entirety. The state argued below, and neither Gonzalez nor the trial court appeared to dispute, that the clauses in the warrant authorizing a search for illegally acquired money and “[a]ny other fruits . . . [or] instrumentalities of . . . money laundering” allowed the police to discover and seize the same illicit drugs and weapons that were specifically listed in the warrant. Our courts have allowed searches that broadly authorize police to collect evidence related to a specified criminal offense. *See, e.g., State v. Lavers*, 168 Ariz. 376, 384, 814 P.2d 333, 341 (1991) (finding warrant not overbroad when it allowed search for “any and all evidence relating to” murder); *State v. Prince*, 160 Ariz. 268, 273, 772 P.2d 1121, 1126 (1989) (when warrant properly authorized search for items connected to murder, “police may seize any other items likely connected to the crime”).

¶23 Furthermore, as the state noted below, the challenged items in the affidavit actually narrowed the scope of the money-laundering search by specifying that police were looking for evidence only related to some forms of racketeering. Under these circumstances, a reasonably well-trained officer might have viewed the search warrant for evidence of a broader offense (money laundering) as also authorizing searches for evidence of its predicate offenses (e.g., drug trafficking) and might have perceived no constitutional infirmity in the warrant insofar as it narrowed the scope of the permissible search. *Cf. United States v. London*, 66 F.3d 1227, 1238 (1st Cir. 1995) (rejecting argument that law enforcement officials could not have reasonably believed “overbroad language in the search warrant was constitutional” when “probable cause [existed] for *some sort* of warrant to have issued” for money-laundering operation).

¶24 Second, even if a reasonable officer would have recognized the need to provide specific information linking money laundering to drug trafficking and weapons, such an officer might regard the affidavit here as implying this information. We do not

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construe affidavits in a hypertechnical manner. *See Adamson*, 136 Ariz. at 258, 665 P.2d at 980; *State v. Watson*, 113 Ariz. 218, 220, 550 P.2d 89, 91 (1976). Indeed, we often interpret them as implying important substantive and foundational matters. *See, e.g., State v. Robinson*, 127 Ariz. 324, 328, 620 P.2d 703, 707 (App. 1980) (upholding warrant despite affidavit's omission of source of information; commonsense reading of affidavit implied information came from crime victims); *State v. Richardson*, 22 Ariz. App. 449, 451-52, 528 P.2d 641, 643-44 (1974) (finding affidavit implied that police captain had observed unusual events and they had occurred on date of search warrant application); *State v. McMann*, 3 Ariz. App. 111, 113, 412 P.2d 286, 288 (1966) (assuming knowledge of "narcotics violators" was based on affiant's personal experience or information easily available to him).

¶25 Given that money laundering is an offense that can involve the proceeds of drug trafficking, *see* §§ 13-2301(D)(4)(b)(xi), 13-2317(B)(1), (2), together with the fact that the present investigation involved the DEA and a special "Border Area Narcotic" task force, and considering also that the relationship between firearms and drug trafficking is a matter of common knowledge, *United States v. Young-Bey*, 893 F.2d 178, 181 (8th Cir. 1990), a reasonable police officer could have believed that the affidavit here implied the necessary connection between money laundering, illicit drugs, and weapons. The affiant's specific statement about his drug-related police experience would have been largely irrelevant if not to provide such a connection.

¶26 Moreover, the trial court did not question the existence of a connection between the offenses or the items sought. The court merely observed there was "usually about a paragraph" in an affidavit explicitly noting such a connection based on an officer's "training and experience." Although we agree this information is important, *see United States v. Ribeiro*, 397 F.3d 43, 50-51 (1st Cir. 2005), and, perhaps under different facts, we would likely find such an omission to be fatal to an affidavit, we cannot find that the lack of an express statement here made reliance on the warrant objectively unreasonable. "Doubtful or marginal affidavits should be considered in light of the preference to be accorded warrants." *State*

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ex rel. Collins v. Superior Court, 129 Ariz. 156, 158, 629 P.2d 992, 994 (1981).

¶27 This was, as the trial court noted, a close case. But it therefore follows, as we established in *State v. Killian*, 158 Ariz. 585, 588, 764 P.2d 346, 349 (App. 1988), that the police could rely on the search warrant in good faith, and the court abused its discretion in ruling otherwise.

Disposition

¶28 For the foregoing reasons, we reverse the trial court's ruling granting the motion to suppress.