NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 KA 0230

STATE OF LOUISIANA

VERSUS

JAMES L. MORGAN

Judgment Rendered: November 3, 2006

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Appealed from the
22nd Judicial District Court
In and for the Parish of Washington, Louisiana
Case No. 05 CR3 92637

The Honorable Raymond S. Childress, Judge Presiding

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

GAIDRY, J.

The defendant, James L. Morgan, was charged by bill of information with one count of operation of a clandestine laboratory for the unlawful manufacturing of methamphetamine (count I), a violation of La. R.S. 40:983, and one count of possession of methamphetamine (count II), a violation of La. R.S. 40:967(C). He initially pled not guilty and moved to suppress the evidence to be used against him. Following a hearing, the motion to suppress was denied, and the defendant pled guilty reserving his right, pursuant to *State v. Crosby*, 338 So.2d 584 (La. 1976), to seek review of the court's ruling on the motion to suppress. On counts I and II, on each count, he was sentenced to five years imprisonment at hard labor, suspended, and five years of probation subject to general and special conditions. The court ordered that the sentences on counts I and II would run concurrently. The defendant now appeals, designating one assignment of error. We affirm the convictions and sentences.

FACTS

Due to the defendant's guilty pleas, there was no trial, and thus, no trial testimony concerning the facts of the case. At the *Boykin* hearing, the State and the defense stipulated to the existence of a factual basis for the charges. The bill of information set forth that the defendant committed counts I and II on September 30, 2004.

ASSIGNMENT OF ERROR

1. The trial court erred in denying the motion to suppress the evidence.

MOTION TO SUPPRESS

In his sole assignment of error, the defendant argues the trial court erred in denying the motion to suppress evidence because the information from the

confidential informant (CI), upon which the search warrant was based, failed to establish probable cause for officers to believe that there was contraband at the defendant's residence.

A search warrant may issue only upon probable cause established to the satisfaction of a judge, by the affidavit of a credible person, reciting facts establishing the cause for issuance of the warrant. La. Const. art. I, § 5; La. Code Crim. P. art. 162. Probable cause exists when the facts and circumstances within the affiant's knowledge, and of which he has reasonably trustworthy information, are sufficient to support a reasonable belief that an offense has been committed and that the evidence or contraband may be found at the place to be searched. The facts establishing probable cause for a search warrant must be contained within the four corners of the affidavit. La. Code Crim. P. art. 162. The judicial officer must be supplied with enough information to support an independent judgment that probable cause exists for the issuance of a warrant. *State v. Fugler*, 97-1936, p. 24 (La. App. 1st Cir. 9/25/98), 721 So.2d 1, 19, rehearing granted and amended in part on other grounds, 97-1936 (La. App. 1st Cir. 5/14/99), 737 So.2d 894, writ denied, 99-1686 (La. 11/19/99), 749 So.2d 668.

An affidavit supporting a search warrant is presumed to be valid. When a defendant proves that an affidavit contains false statements, it should be determined whether the misrepresentations are intentional or unintentional. Defendant must prove by a preponderance of the evidence that the affidavit contains intentional misrepresentations. *Fugler*, 97-1936 at p. 24, 721 So.2d at 19.

Affidavits, by their nature, are brief, and some factual details must be omitted. Unless the omission is willful and calculated to conceal

information that would indicate that there is not probable cause or would indicate that the source of other factual information in the affidavit is tainted, the omission will not change an otherwise good warrant into a bad one. In matters relating to the possibility that a warrant contains intentional misrepresentations, the question of the credibility of the witnesses is within the sound discretion of the trier of fact. His factual determinations are entitled to great weight and will not be disturbed unless clearly contrary to the evidence. The harsh result of quashing a search warrant, when the affidavit supports a finding of probable cause, should obtain only when the trial judge expressly finds an intentional misrepresentation to the issuing magistrate. *Fugler*, 97-1936 at pp. 24-25, 721 So.2d at 19.

In *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the court considered the application of the Fourth Amendment to the issuance by a magistrate of a search warrant on the basis of a partially corroborated tip from an anonymous informant. The court held the determination of whether or not probable cause existed for the issuance of the warrant should be made on the basis of a totality of the circumstances analysis with a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability) attending an informant's tip, including veracity, reliability, and basis of knowledge. *Illinois*, 462 U.S. at 238-39, 103 S.Ct. at 2332.

In the instant case, prior to his guilty plea, the defendant moved to suppress the evidence to be used against him as obtained in violation of his constitutional rights against unreasonable searches and seizures. Following a hearing, the trial court denied the motion, noting:

> In reviewing the affidavit, the information provided by the first [CI] was very detailed and specific and, in the Court's opinion, certainly sufficient for the search warrant in and of

> itself. The attempt to corroborate it by having a second [CI] there, I think was something that the officer felt would be even more appropriate to further buttress the information contained by the first [CI].

The September 30, 2004 affidavit of Washington Parish Sheriff's Office Lieutenant Ray Lentz for a search warrant to search the residence of James Leon Morgan located at 50065 Lawrence Creek Road, Franklinton, Louisiana, in pertinent part, set forth:

> On September 30th 2004[,] your Affiant met with a subject at the Drug Task Force office. This subject herein is referred to as C.I.
>
> This C.I. has not in the past provided any information to your Affiant and therefore not proven to be reliable.
>
> This C.I. stated that on this date[,] September 30, 2004[,] at approx[.] 1430hrs[,] he/she was at the residence of James "Leon" Morgan located at the above described dwelling. While at said residence[,] he/she had engaged in conversation with Morgan and that Morgan for un-known [sic] reasons started to explain to him/her the illicit manufacturing process of manufacturing methamphetamine. Morgan even showed the C.I. several jars located inside a shed and explained to the C.I. that several of the jars contained methamphetamine. In addition[,] Morgan stated to the C.I. that he was "cooking" a batch of methamphetamine this afternoon and if he/she wanted any to call or stop by later in the evening.
>
> This C.I. stated that he/she had no knowledge of the illicit manufacturing process of manufacturing methamphetamine. At this point, your Affiant showed the C.I. an instructional chart of how methamphetamine is illicitly manufactured. The C.I. picked out several items on the chart to include several cans of Coleman fuel, coffee filters, glass jars with bi-layers of liquid and most importantly the C.I. observed several hydrogen chloride gas generators in the shop area. Your Affiant through training and experience knows that there is no legitimate purpose for [anyone] to have a home made (sic) improvised hydrogen chloride gas generator other than for the purpose of illicitly manufacturing methamphetamine.
>
> The C.I. stated that while at Morgan's residence[,] he/she observed several young teenagers at the residence. The C.I[.] further stated that he/she strongly suspects that Morgan is selling narcotics to said teenagers. Your Affiant has received numerous complaints concerning Morgan selling narcotics to students at the Pine High School, the most [recent] complaint being September 29, 2004.

> September 29th 2004[,][1] your Affiant contacted a [CI] who has in the past provided information, which has proven to be reliable. Your Affiant knows that this Informant personally knows Morgan and instructed this Informant to go to Morgan's residence and engage in a social visit.
>
> Upon arrival at Morgan's residence[,] this Informant stated that he/she observed numerous young teenagers at Morgan's residence and that they appeared to be nervous upon seeing his/her presence. In addition[,] this Informant stated that he/she recognized several of the teenagers as being students of Pine High School. At this point[,] the Informant engaged in conversation with Morgan in which Morgan stated that he was busy at the moment and advised the Informant to stop by later.
>
> This information provided by second independent investigation [c]orroborated the information which was provided by the initial C.I. earlier in the day.
>
> Based on the above facts and reason[,] your Affiant believes that secreted inside the shop and residence of James Leon Morgan are items used to facilitate the illicit manufacturing of methamphetamine.

There was no abuse of discretion in denying the motion to suppress the evidence. Under the totality of the circumstances, the veracity, reliability, and basis of knowledge of the first and second CIs for the information provided to the police concerning the operation of a methamphetamine laboratory and the possession of methamphetamine by the defendant at the residence of the defendant exhibited sufficient indicia of reliability to support issuance of the search warrant. While Lieutenant Lentz candidly stated the first CI had no history of providing reliable information, the information provided by that CI was extremely detailed and came from personal observation. Additionally, some of the information from the first CI was corroborated by the second CI.

This assignment of error is without merit. Defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.

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[1] A reading of the affidavit as a whole, suggests this date was actually "September 30th, 2004."