**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 KA 0592

STATE OF LOUISIANA

VERSUS

DARRIS D. SARTIN

Judgment Rendered: SEP 17 2009

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF WASHINGTON
STATE OF LOUISIANA
DOCKET NUMBER 07 CR1 96354, DIVISION "E"

THE HONORABLE WILLIAM J. BURRIS, JUDGE

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**BEFORE: PARRO, KUHN, AND McDONALD, JJ.**

**McDONALD, J.**

The defendant, Darris D. Sartin, was charged by bill of information with possession with intent to distribute cocaine, a violation of La. R.S. 40:967 (count one), possession with intent to distribute marijuana, a violation of La. R.S. 40:966 (count two), and obstruction of justice, a violation of La. R.S. 14:130.1 (count three). He initially pled not guilty. The defendant filed a motion to suppress the evidence. With written reasons assigned, the trial court denied the motion. Subsequently, the state amended the bill of information and reduced count one to possession of cocaine and count two to possession of marijuana. The charge in count three remained the same, but the bill was amended to reflect the applicable portion of the statute for that charge. The defendant withdrew his not guilty plea and pled guilty as charged to the amended bill of information, reserving his right to appeal the trial court's denial of the motion to suppress. See **State v. Crosby**, 338 So.2d 584 (La. 1976). After accepting the defendant's guilty plea, the trial court sentenced him to imprisonment at hard labor for five years on count one, six months in parish jail on count two, and eight years at hard labor on count three. The court ordered that the sentences be served concurrently with each other and concurrently with the sentence imposed in the companion case, 22nd J.D.C. docket number 07 CR1 96355.[1] The defendant now appeals, urging a single assignment of error challenging the trial court's ruling on his motion to suppress. Finding no merit in the assigned error, we affirm the defendant's convictions and sentences.

**FACTS**

Because the defendant pled guilty and there was no hearing on the motion to suppress, the facts of the offenses were never fully developed in the record. The

[1] In the companion case, which stemmed from the same factual scenario as the instant case, the defendant was charged with illegal possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1. He pled guilty to the reduced charge of attempted possession of a firearm by a convicted felon. He was sentenced to imprisonment at hard labor for five years. The defendant also appeals the denial of the motion to suppress in the companion case. **State v. Sartin**, 2009-0595 (La. App. 1st Cir. --/--/09) (also decided this date).

following facts were gleaned from the police reports, affidavit, and warrants

following facts were gleaned from the police reports, affidavit, and warrants contained in the record. According to the trial court's written reasons for judgment, the parties stipulated to these police reports and warrants.

On January 26, 2007, in connection with an ongoing narcotics investigation, the Bogalusa Police Department Narcotics Division received information indicating that the defendant and Bobby Sartin were selling cocaine from a residence on East Third Street in Bogalusa, Louisiana. Additionally, a confidential informant (C.I.) advised Detective Kendall Bullen that he/she could purchase a quantity of cocaine from the residence. The C.I. indicated that he/she had been present at the residence within the previous 24/48 hours and had personally observed a large quantity of marijuana and cocaine there. The C.I. further indicated that he/she had observed narcotics in the residence on previous occasions. Based upon this information, as set forth in a search warrant affidavit, Bogalusa City Court Judge Robert Black signed a warrant on January 26, 2007, to search the residence.

Later that same day, when the detectives went to the East Third Street residence to execute the warrant, only Bobby Sartin was present. The defendant's whereabouts were unknown. No illegal narcotics were discovered in the residence at this time. However, in searching the bedroom identified (by Bobby Sartin) as the defendant's room, a loaded Glock .40 caliber, Model 23, handgun was discovered under the dresser. The gun was wrapped in a handkerchief. The handgun was seized as evidence. Bobby Sartin was released and the detectives left the residence.

Later, a criminal background check was run on the defendant. The detectives learned that the defendant was a convicted felon, currently out on parole. The detectives secured a warrant for the defendant's arrest for violating La. R.S. 14:95.1, illegal possession of a weapon by a convicted felon.

On February 14, 2007, the drug task force detectives and probation and parole agents went to the East Third Street residence to execute the arrest warrant. At the residence, Detective Wendell O'Berry went to the rear door and Detective Bullen and the probation and parole agents went to the front door. In the rear, Detective O'Berry observed a black male, subsequently identified as Bobby Sartin, exiting a window. Meanwhile, through the partially ajar front door, the defendant saw the officers and fled. He ran into the bathroom and flushed something down the toilet believed to be powder cocaine. The defendant was apprehended and placed under arrest. Incident to the arrest, the officers searched the defendant and found five individually packaged bags of marijuana and a pill bottle containing marijuana inside the defendant's left, front jacket pocket.

The defendant admitted ownership of the marijuana and indicated that it was for his personal use. There was also a strong odor of burnt marijuana inside the residence. The defendant had approximately $185.00 in cash in his pants pocket. While in the bathroom, the defendant had also been observed placing approximately $4,750.00 in cash into the pocket of Sherree Cochran, another occupant present in the residence.[2] The illegal narcotics and the money, a total of $4935.00, were seized pending forfeiture. Based upon the aforementioned facts, another warrant to search the residence was obtained. During the second search of the residence, a small plastic container with seven rocks of crack cocaine (approximately 1.5 grams) was recovered from the defendant's bedroom. Cochran identified the same bedroom that the gun was previously found in as the defendant's bedroom.

[2] According to the police report, Cochran was in the bathtub and her pants were lying on the floor. The defendant denied placing the money in Cochran's pants and indicated that the money belonged to Cochran. Cochran stated that the money did not belong to her (it was the defendant's) and she did not know why the defendant put it in her pocket.

## DENIAL OF MOTION TO SUPPRESS

In his sole assignment of error, the defendant argues the trial court's ruling denying his motion to suppress was erroneous and should be reversed, because the initial search of the residence, which resulted in the discovery of the handgun, was invalid because it was based upon a "bare bones" or "conclusory" affidavit that was insufficient to support a finding of probable cause. The defendant specifically notes that the reliability of the C.I. was not described in the affidavit and the information provided by the C.I. was not independently corroborated by observation of the police. The defendant further asserts that the arrest warrant, based upon the recovery of the handgun from the defendant's bedroom, was also invalid, since his status as a convicted felon was not discovered until later. The gun, he argues, was not "evidence of a crime" when it was discovered, and thus, it should not have been seized. The defendant asserts that any illegal narcotics found at the residence were fruits of the unlawful search without a valid arrest warrant.

Article I, §5 of the Louisiana Constitution requires that a search warrant may issue only upon an affidavit establishing probable cause to the satisfaction of an impartial magistrate. See 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 evidence or contraband may be found at the place to be searched. **State v. Johnson**, 408 So.2d 1280, 1283 (La. 1982). The facts establishing the existence of probable cause for the warrant must be contained within the four corners of the affidavit. **State v. Duncan**, 420 So.2d 1105, 1108 (La. 1982).

An issuing magistrate must make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there is a "fair probability" that evidence of a crime will be found in a particular place. **State v.**

**Byrd**, 568 So.2d 554, 559 (La. 1990). The process of determining probable cause for the issuance of a search warrant does not involve certainties or proof beyond a reasonable doubt, or even a prima facie showing, but rather involves probabilities of human behavior, as understood by persons trained in law enforcement and as based on the totality of circumstances. The process simply requires that enough information be presented to the issuing magistrate to enable him to determine that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal justice system. See **State v. Rodrigue**, 437 So.2d 830, 832-33 (La. 1983).

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. **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. If the basis for the existence of probable cause is the tip of an anonymous informant, the affiant must articulate the basis for his belief that the informant is trustworthy. This may be done by showing circumstances where the informant has given reliable information in the past. The affidavit must also indicate the underlying circumstances from which the informant concluded that the things to be seized were where he said they would be. This may be done by reciting that the informant personally observed the things to be seized under the circumstances recited. An allegation of past reliability is not necessarily a *sine qua non* to sufficiency of probable cause, as long as a common-sense reading of the affidavit supports the conclusion that the informant is credible and his information is reliable. See **State v. Clay**, 408 So.2d 1295 (La. 1982).

The review of a magistrate's determination of probable cause prior to issuing

The review of a magistrate's determination of probable cause prior to issuing a warrant is entitled to significant deference by reviewing courts. "[A]fter-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of *de novo* review." **Illinois v. Gates**, 462 U.S. 213, 236, 103 S.Ct. 2317, 2331, 76 L.Ed.2d 527 (1983). Further, because of "the preference to be accorded to warrants," marginal cases should be resolved in favor of a finding that the issuing magistrate's judgment was reasonable. **State v. Rodrigue**, 437 So.2d at 833.

In the instant case, there was no hearing on the defendant's motion to suppress. The parties submitted the matter on the briefs. After taking the matter under advisement, the trial court denied the motion to suppress and provided detailed written reasons. In denying the motion as it relates to the initial search, the trial court concluded that the affidavit in support of the search warrant had sufficient information to be more than a "bare bones" or "conclusory" affidavit. The court specifically noted that the affidavit indicated that, based on other information received during the ongoing investigation, the police already suspected that the defendant and Bobby Sartin were selling cocaine from the residence. This information was corroborated by the information provided by the C.I.

On the collateral issue of whether the handgun was legally seized, the trial court, citing La. Code Crim. P. arts. 161 and 165, held that, since firearms are common tools in drug trafficking, the officers were within their authority to seize the handgun in connection with the ongoing drug investigation. The court went further to conclude that even if the arrest warrant was not technically valid (because the affidavit was not originally provided), the warrantless entry into the residence with probation and parole officers is valid if there is a reasonable cause to believe the probationer or parolee is committing or may have committed a crime.

Following a close examination of the record and a thorough review of the

Following a close examination of the record and a thorough review of the applicable law, we find no error or abuse of discretion in the trial court's denial of the defendant's motion to suppress in this case. It is apparent the affidavit was sufficient to establish probable cause, despite the defendant's contention that the reliability of the C.I. was not established. The affidavit sufficiently described the residence to be searched and gave accurate directions as to its location. The affidavit also provided, in pertinent part:

> On January 26, 2007[,] detectives with the drug task force were working a narcotics investigation reference to the sale of illegal narcotics at 833 East 3rd Street in Bogalusa. Narcotic detectives have been receiving information that Darris and Bobby Sartin [were] selling cocaine from the residence. Detectives received information from a confidential source that he/she could purchase a quantity of cocaine from the residence. The confidential source stated he/she had been at the residence within the last 24/48 hours and seen large quantity's [sic] of marijuana and cocaine at the residence. The confidential source stated he/she has observed narcotics in the residence on previous occasions.

Considering the totality of the circumstances, we find that the information previously received by the drug task force during its narcotics investigation, along with the information from the C.I. confirming that the defendant and his brother were, in fact, selling drugs from the East Third Street residence, and the C.I.'s personal observation of the presence of large quantities of marijuana and cocaine at the residence, exhibited sufficient indicia of reliability to support issuance of the search warrant. Although the affidavit does not establish whether the C.I. had a history of providing reliable information, we note that the informant was confidential, not anonymous. We further note that the information provided by that C.I. was based on personal observation and was consistent with other information received by the officers. Reliability of information may be established by direct personal observation of the informant. **State v. Tilley**, 525 So.2d 716, 719 (La. App. 1st Cir. 1988). The trial court correctly concluded that the search warrant established probable cause, since the facts and circumstances were

sufficient to support a reasonable belief that an offense had been committed and

sufficient to support a reasonable belief that an offense had been committed and that evidence or contraband would be found at the place to be searched.

Furthermore, it is well settled that even when a search warrant is found to be deficient, the seized evidence may nevertheless be admissible under the good-faith exception of **United States v. Leon**, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). In **Leon,** the United States Supreme Court established a "good faith" exception to the exclusionary rule. The court held the exclusionary rule should not be applied so as to bar the use in the prosecution's case-in-chief of evidence obtained by officers acting in an objectively reasonable good-faith reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be invalid. The Supreme Court reexamined the purposes of the exclusionary rule and its applications in cases where officers have relied on a subsequently invalid search warrant. The exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates. Even assuming that the exclusionary rule effectively deters police misconduct and provides incentives for the law enforcement authorities to conduct themselves in accord with the Fourth Amendment, it should not be applied "to deter objectively reasonable law enforcement activity." **Id.** 468 U.S. at 919, 104 S.Ct. at 3418. Where the official action was pursued in complete good faith, the deterrence rationale loses much of its force. **Id.** 468 U.S. at 919, 104 S.Ct. at 3418. The Supreme Court stated:

> Because a search warrant "provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer 'engaged in the often competitive enterprise of ferreting out crime,'" we have expressed a strong preference for warrants and declared that "in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall."

**Id.** 468 U.S. at 913-14, 104 S.Ct. at 3415-16 (citations omitted).

The **Leon** court enumerated four instances in which suppression remains an appropriate remedy: (1) where the issuing magistrate was misled by information the affiant knew was false or would have known was false except for a reckless disregard for the truth; (2) where the issuing magistrate wholly abandoned his detached and neutral judicial role; (3) where the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and (4) where the warrant is so facially deficient--in failing to particularize the place to be searched or the things to be seized--that the executing officers cannot reasonably presume it to be valid. **Id.** 468 U.S. at 923, 104 S.Ct. at 3421.

Applying these factors to the current case, we find that even if the initial search warrant was to be considered defective, the good-faith exception would apply. There were no misleading statements contained in the affidavit. There was no evidence that Judge Black abandoned his neutral role in his issuance of the search warrant, nor was there anything on the face of the warrant that would make it so deficient that it could not be presumed valid. Detective Bullen provided the magistrate information gathered by the drug task force and corroborated by the C.I. It cannot be said that when all of these factors are considered collectively that Detective Bullen was unreasonable in believing that he was providing the judge with sufficient information to issue a warrant. Therefore, the facts do not support a finding that the affidavit was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." **Id.** 468 U.S. at 923, 104 S.Ct. at 3421. The trial court did not err in rejecting the defendant's motion to suppress on this ground.

Insofar as the defendant's argument that the handgun should not have been seized, we find, as did the trial court, that the detectives were within their authority to seize the gun found in the residence in connection with the ongoing

investigation. La. Code Crim. P. art. 165 provides, "[w]hile in the course of executing a search warrant, a peace officer may make photographs, lift fingerprints, seize things whether or not described in the warrant that may constitute evidence tending to prove the commission of any offense...." As the trial court noted, guns and drugs frequently go hand-in-hand. See **United States v. Trullo,** 809 F.2d 108, 113 (1st Cir.), cert. denied, 482 U.S. 916, 107 S.Ct. 3191, 96 L.Ed.2d 679 (1987) ("[T]o substantial dealers in narcotics, firearms are as much 'tools of the trade' as are most commonly recognized articles of drug paraphernalia.") Thus, the officers in this case acted reasonably and within their authority in seizing the handgun from the residence where drug trafficking was suspected. See La. R.S. 14:95(E). Since the handgun was lawfully seized, the resulting arrest warrant, based upon the defendant's status as a convicted felon, was valid. There was no unlawful search or seizure, and thus, no poisonous fruits.

**CONVICTIONS AND SENTENCES AFFIRMED.**