IN THE SUPREME COURT OF THE STATE OF NEVADA

GABRIEL JURADO, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 44454
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FILED

JUL 0 5 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from judgments of conviction, pursuant to guilty pleas. Sixth Judicial District Court, Humboldt County; John M. Iroz, Judge. In district court case number CR03-4742, appellant Gabriel Jurado was convicted of one count of level-three trafficking in a controlled substance. The district court sentenced Jurado to serve a prison term of 10 to 25 years. In district court case number CR04-4848, Jurado was convicted of five counts of being an ex-felon in possession of a firearm. The district court sentenced Jurado to serve five concurrent prison terms of 12 to 36 months to run concurrently with the sentence imposed in district court case number CR03-4742.

Jurado first contends that the district court erred in denying his motion to dismiss both cases because his right to confront and cross-examine witnesses against him[1] was violated at the preliminary hearing.[2]

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[1]See U.S. Const. amend. VI; Nev. Const., art. 1, § 8(5); NRS 171.196(5).

[2]Our preliminary review of this appeal indicated that the parties did not expressly reserve in writing the right to appeal the district court's

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Specifically, Jurado contends that the State failed to disclose the identity of two material witnesses, namely, confidential informants who had provided information used in establishing probable cause to obtain a search warrant. We conclude that Jurado's contention lacks merit.

NRS 49.335 permits the State to refuse to disclose the identity of a confidential informant. However, the statutory right to refuse disclosure is not unlimited, and the district court shall dismiss the proceedings based on the State's refusal to disclose the identity of a confidential informant where there is "a reasonable probability that the informer can give testimony necessary to a fair determination of the issue of guilt or innocence."[3] In considering whether dismissal is appropriate based on the State's refusal to disclose, this court has recognized that "[t]he identity of an informant need not be disclosed where he is not a material witness, because he can neither supply information constituting a defense nor rebut a necessary element of an offense."[4]

In this case, the State refused to disclose the identities of two of the confidential informants because they were part of an ongoing

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rulings denying the pretrial motions to dismiss and suppress. See NRS 174.035(3). Consequently, on May 16, 2005, this court ordered counsel for Jurado to show cause why the judgments of conviction should not be affirmed because the issues raised were waived by entry of the guilty pleas. On June 8, 2005, counsel for Jurado filed a reply to the order to show cause. Attached to the reply were transcripts of the plea canvass wherein the parties, with the consent of the district court, expressly reserved Jurado's right to appeal the rulings on the pretrial motions to dismiss and suppress. Accordingly, we conclude that Jurado did not waive the issues raised in this appeal by entering his guilty pleas.

[3]NRS 49.365.

[4]Sheriff v. Vasile, 96 Nev. 5, 8, 604 P.2d 809, 810 (1980).

investigation, and there was some concern for the personal safety of one of the informants. We conclude that dismissal of the case was not warranted based on the State's failure to disclose because the two confidential informants were not material witnesses. Both informants merely provided law enforcement with information that Jurado was engaged in a drug trafficking operation,[5] and neither informant had knowledge that Jurado could use in establishing a defense nor could they provide testimony rebutting a necessary element of charged offenses.[6] Accordingly, we conclude that district court did not err in denying the motion to dismiss.

Jurado next contends that the district court erred in denying the motion to suppress evidence in both cases because there was no statement of probable cause on the face of the warrant as required by this court in State v. Allen.[7] We conclude that Jurado's contention lacks merit. In State v. Gameros-Perez,[8] this court clarified the rule in Allen, stating that "it is unnecessary for police authorities and judicial officers to recite a statement of probable cause on the face of search warrants issued pursuant to NRS 179.045(3), upon sealed affidavits."[9] Here, because the

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[5]Cf. State v. Stiglitz, 94 Nev. 158, 161, 576 P.2d 746, 748 (1978) (confidential informant not material witness where merely supplied police with knowledge of defendant's illegal operation and had no direct involvement in the actual illegal transaction giving rise to the criminal charges).

[6]Cf. Vasile, 96 Nev. at 8, 604 P.2d at 810-11 (confidential informant was material witness where he personally observed defendant engaged in drug transaction at issue).

[7]119 Nev. 166, 69 P.3d 232 (2003).

[8]119 Nev. 537, 78 P.3d 511 (2003).

[9]Id. at 541, 78 P.3d at 514.

warrant was issued upon a sealed affidavit, which was incorporated by reference into the warrant, the warrant was not defective due to the lack of a statement of probable cause.

Jurado also contends that the district court erred in denying the motion to suppress because he was not provided with a copy of the search warrant. We conclude that Jurado's contention lacks merit. At the preliminary hearing, Detective Sergeant Andrew Rasor testified that, after securing the residence, he provided Jurado with a copy of the search warrant, as well as the application and the order sealing the affidavit. Accordingly, we conclude that the district court did not err in denying the motion to suppress because a copy of the search warrant was provided at the time the search was executed.

Finally, Jurado contends that the district court erred in denying his motion to suppress because probable cause did not exist to support the issuance of the search warrant. In particular, Jurado contends the affidavit in support of probable cause was based on information from confidential and named informants that was stale or unreliable and based on hearsay. We disagree.

A search warrant may issue only upon facts sufficient to satisfy a magistrate that probable cause exists to believe that contraband will be found if the search is conducted.[10] This court has stated that "[w]hether probable cause is present to support a search warrant is determined by a totality of circumstances."[11] "A deficiency in either an

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[10]See NRS 179.045(1).

[11]Doyle v. State, 116 Nev. 148, 158, 995 P.2d 465, 471 (2000) (citing Illinois v. Gates, 462 U.S. 213, 238 (1983); Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994)).

informant's veracity and reliability or his basis of knowledge 'may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.'"[12] This court will not conduct a de novo review of a probable cause determination, but instead will determine "whether the evidence viewed as a whole provided a substantial basis for the magistrate's finding of probable cause."[13]

We conclude that the district court did not err in ruling that there was a substantial basis for the magistrate's finding of probable cause. In particular, Detective Sergeant Rasor received tips from three confidential informants and numerous named informants about Jurado's illegal drug activities, which were set forth in the affidavit. Some of the information provided included details about the types of controlled substances Jurado had, where he kept them, and how he engaged in drug trafficking. Further, most of the informants were individuals known to be involved in the sale and distribution of controlled substances, and several had previously provided information to authorities that resulted in the arrest of other drug traffickers. Accordingly, we conclude that the totality of the circumstances reveals a substantial basis for the issuance of the search warrant.

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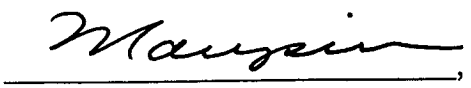
[12]Doyle, 116 Nev. at 158, 995 P.2d at 471 (quoting Gates, 462 U.S. at 233).

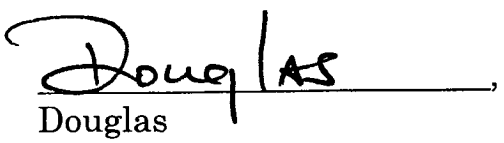
[13]Keesee, 110 Nev. at 1002, 879 P.2d at 67 (citing Massachusetts v. Upton, 466 U.S. 727 (1984)).

Having considered Jurado's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Maupin



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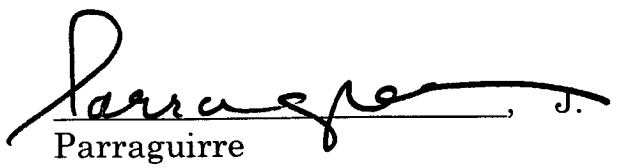
Douglas



_____, J.
Parraguirre

cc: Hon. John M. Iroz, District Judge
Belanger & Plimpton
Attorney General Brian Sandoval/Carson City
Humboldt County District Attorney
Humboldt County Clerk