

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK ANTHONY PAVAO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45318

**FILED**

DEC 23 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of unlawful use of a controlled substance (count I), possession of a controlled substance (count II), and gross misdemeanor child abuse and neglect (count III). Sixth Judicial District Court, Pershing County; Richard Wagner, Judge. The district court sentenced appellant Patrick Anthony Pavao to a prison term of 12 to 34 months for count I, a concurrent prison term of 12 to 34 months for count II, and a concurrent jail term of 6 months for count III. The district court then suspended execution of the sentences imposed and placed Pavao on probation with the condition that he complete drug court.

Pavao's sole contention on appeal is that the district court erred in denying his pretrial motion to suppress because probable cause did not exist to support the issuance of the search warrant. Citing to People v. Pressy<sup>1</sup> and related legal authority, Pavao argues that there was an insufficient nexus between the controlled substances seized and his

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<sup>1</sup>126 Cal. Rptr. 2d 162 (Cal. Ct. App. 2002) (concluding that there must be evidence of illegal drug activity connected with home in order to obtain a search warrant).

residence to support a finding of probable cause. We conclude that Pavao's contention lacks merit.

A search warrant may issue only upon facts sufficient to satisfy a magistrate that probable cause exists to believe that it contraband will be found if the search is conducted.<sup>2</sup> Probable cause requires factual circumstances for a reasonable person to believe that is more likely than not that specific illegal items will be found in the place to be searched.<sup>3</sup> This court has stated that “[w]hether probable cause is present to support a search warrant is determined by a totality of circumstances.”<sup>4</sup> 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.”<sup>5</sup>

In this case, 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. The affidavit submitted by the police officer describing his personal observations of the Pavaos while lawfully inside their residence supports a finding that that they were under the influence of controlled substances and those controlled substances were likely present in the

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<sup>2</sup>See NRS 179.045(1).

<sup>3</sup>Illinois v. Gates, 462 U.S. 213, 238-39 (1983)

<sup>4</sup>Doyle v. State, 116 Nev. 148, 158, 995 P.2d 465, 471 (2000) (citing Gates, 462 U.S. at 238-39); Keese v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994)).

<sup>5</sup>Keese, 110 Nev. at 1002, 879 P.2d at 67 (citing Massachusetts v. Upton, 466 U.S. 727 (1984)).

home. Unlike Pressy and the other authority cited by Pavao, the police officer's affidavit established a sufficient nexus between the controlled substances evidence and the residence. Accordingly, we conclude that the totality of the circumstances reveals a substantial basis for the issuance of the search warrant.<sup>6</sup>

Having considered Pavao's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.  
Douglas

Rose, J.  
Rose

Parraguirre, J.  
Parraguirre

cc: Hon. Richard Wagner, District Judge  
State Public Defender/Carson City  
State Public Defender/Winnemucca  
Attorney General George Chanos/Carson City  
Pershing County District Attorney  
Pershing County Clerk

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<sup>6</sup>In light of our conclusion that there was probable cause to support of the issuance of the search warrant, we need not address whether the good-faith exception to the exclusionary rule is applicable in this case. See United States v. Leon, 468 U.S. 897 (1984).