IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES KEVIN WEST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48243

FILED

MAR 08 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of trafficking in a controlled substance. Third Judicial District Court, Lyon County; David A. Huff, Judge. The district court sentenced appellant James Kevin West to serve a prison term of 12 to 48 months.

West contends that the district court erred in denying his pretrial motion to suppress evidence seized in his garage pursuant to a search warrant.[1] Specifically, West claims that there was insufficient probable cause in support of the search warrant because: (1) there was no information directly linking him to illegal drug sales or manufacturing; (2) the tip from a confident informant that he had used methamphetamine in his residence was stale; and (3) there was no assurance that the information provided by anonymous informants was trustworthy given that it was not independently corroborated. We disagree.

A search warrant may issue only upon facts sufficient to satisfy a magistrate that probable cause exists to believe that contraband

[1]West preserved the right to raise this issue on appeal pursuant to NRS 174.035(3).

will be found if the search is conducted.[2] This court has stated that "[w]hether probable cause is present to support a search warrant is determined by a totality of circumstances."[3] 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."[4]

In this case, the district court did not err by ruling that there was a substantial basis for the magistrate's finding of probable cause. The totality of the circumstances indicates that methamphetamine or materials used to manufacture methamphetamine were likely present in West's garage. Nonetheless, even assuming the circumstances were insufficient to support a finding of probable cause, we conclude that the good-faith exception to the exclusionary rule is applicable in this case.[5] The police officers acted reasonably in applying for and relying on the search warrant.[6] Accordingly, the district court did not err by denying West's motion to suppress evidence seized pursuant to a search warrant.

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[2]See NRS 179.045(1).

[3]Doyle v. State, 116 Nev. 148, 158, 995 P.2d 465, 471 (2000) (citing Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994)).

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

[5]See United States v. Leon, 468 U.S. 897 (1984).

[6]See Point v. State, 102 Nev. 143, 149, 717 P.2d 38, 42-43 (1986), disapproved of on other grounds by Stowe v. State, 109 Nev. 743, 857 P. 2d 15 (1993).

West also argues that the district court erred by finding that he consented to a search of his residence. We disagree.

The State has the burden to prove a defendant consented to a search by clear and convincing evidence.[7] A search based on consent is lawful where the State can show that the defendant's consent "was voluntary and not the result of duress or coercion."[8] Voluntariness depends on "whether a reasonable person in the defendant's position, given the totality of the circumstances, would feel free to decline a police officer's request."[9]

In this case, the district court did not err by ruling that the consent was voluntary. The totality of the circumstances indicates that West invited the officers inside his home and freely admitted that he possessed methamphetamine. There is no indication in the record that West's consent to search was obtained through duress or coercion. And West signed written consent forms.[10] Accordingly, the district court did not err by denying West's motion to suppress the evidence seized pursuant to consent.[11]

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[7]McMorran v. State, 118 Nev. 379, 383, 46 P.3d 81, 84 (2002).

[8]State v. Burkholder, 112 Nev. 535, 539, 915 P.2d 886, 888 (1996) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973)).

[9]Id. (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)).

[10]We also reject West's argument that the scope of the search exceeded the consent. See State v. Johnson, 116 Nev. 78, 81, 993 P.2d 44, 46 (2000).

[11]We decline to consider West's contention that his statements to police should be excluded based on Miranda v. Arizona, 384 U.S. 436

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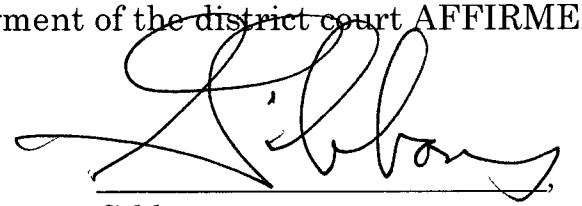
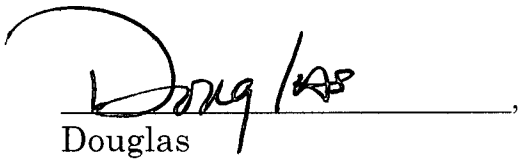
Having considered West's contentions and concluded that they lack merit, we

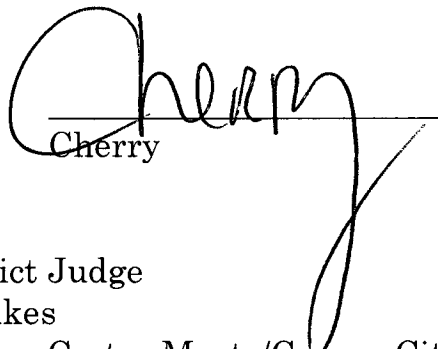
ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. David A. Huff, District Judge
Law Offices of John E. Oakes
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk

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(1966), because he failed to raise this issue below. See McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998).