

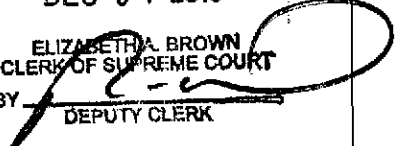
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS WAYNE LASELVA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75856

**FILED**

DEC 04 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Thomas Wayne Laselva appeals from a judgment of conviction, entered pursuant to a guilty plea, of conspiracy to commit unlawful use or being under the influence of a controlled substance. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Laselva argues the district court erred by denying his pretrial motion to suppress.<sup>1</sup> Laselva argues the search warrant was overbroad because there was no probable cause alleged to demonstrate use of a controlled substance. Laselva claims the affidavit in support of the seizure warrant did not allege anyone saw him using a controlled substance, information given by the confidential informant was stale, and use is not an element of possession of a controlled substance. Therefore, a warrant for the seizure of Laselva's blood and/or urine was overbroad. Laselva also argues the district court erred by denying his motion to suppress because

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<sup>1</sup>This claim was preserved for appeal pursuant to NRS 174.035(3).

the affidavit in support of the search warrant was intentionally misleading and failed to include critical information.

“Whether probable cause is present to support a search warrant is determined by a totality of circumstances.” *Doyle v. State*, 116 Nev. 148, 158, 995 P.2d 465, 471 (2000). “Probable cause’ requires that law enforcement officials have trustworthy facts and circumstances which would cause a person of reasonable caution to believe that it is more likely than not that the specific items to be searched for are: seizable and will be found in the place to be searched.” *Keese v. State*, 110 Nev. 997, 1002, 879 P.2d 63, 66 (1994). We review an issuing judge’s determination of probable cause for an abuse of discretion. *Doyle*, 116 Nev. at 158, 995 P.2d at 471-72. Thus, we need only “determine whether there is a substantial basis for concluding that probable cause existed.” *Id.* at 158, 995 P.2d at 472.

The district court found the following facts demonstrated there was a substantial basis to issue the search warrant: (1) the officer reviewed messages between a person and Laselva that indicated Laselva sold a bag of drugs to the person’s child; (2) officers were conducting surveillance on a home suspected of drug trafficking and selling illegal firearms; (3) during that surveillance, officers witnessed a white extended cab Chevrolet truck enter the property twice and witnessed an exchange both times; (4) the second time the truck appeared, an officer recognized the passenger who conducted the exchange as Laselva; (5) after executing a search warrant on the home, a female suspect told officers she sold Laselva \$60 of fake methamphetamine; (6) the female suspect showed officers messages between her and Laselva where Laselva asks her to sell her “a 60;” (7) the

officer spoke to a confidential informant who is friends with Laselva who informed the officer Laselva is "crazy for methamphetamine" and constantly uses it; and (8) the confidential informant also informed the officer Laselva had sold him methamphetamine as recently as one month ago. The officer stated in the affidavit, based on the preceding evidence, Laselva was engaged in the sale or use of a controlled substance and believed methamphetamine would be located on Laselva's person or in his bodily fluids.

The district court found the totality of this evidence demonstrated the officer had probable cause to believe Laselva possessed or used methamphetamine and the search warrant was properly granted. Further, the district court found the officer's affidavit was not misleading nor did it intentionally omit pertinent information. The district court also found the warrant was not overbroad when it included the ability to test bodily fluids because it was tailored for the purposes enumerated therein.

We conclude the district court did not abuse its discretion by finding there was a substantial basis for concluding probable cause existed for granting the search warrant or by finding the warrant was not overbroad. Therefore, we conclude the district court did not abuse its discretion by denying the motion to suppress on this basis.

Laselva also argues there was no probable cause to arrest him, and, therefore, his motion to suppress should have been granted. The district court found, even if the officers did not have probable cause to arrest him, the evidence collected pursuant to the arrest would not have been suppressed because it was validly collected pursuant to the warrant.

Substantial evidence supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion to suppress on this basis.

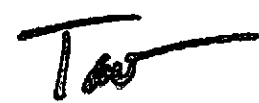
We also conclude the officer had probable cause to arrest Laselva. To be legal, an arrest must be based on probable cause. *Keesee*, 110 Nev. at 1001, 879 P.2d at 66; *see* U.S. Const. amend IV; Nev. Const. art. 1, § 18. Probable cause to arrest exists when the facts known to police permit a reasonable person to believe the person to be arrested has committed a crime. *State v. McKellips*, 118 Nev. 465, 472, 49 P.2d 655, 660 (2002); *see* NRS 171.106. The reviewing court determines simply “whether there is a substantial basis for concluding that probable cause existed.” *Doyle*, 116 Nev. at 158, 995 P.2d at 472.


At the preliminary hearing, the officer testified he had probable cause to arrest Laselva based on either conspiracy to violate the Controlled Substances Act or as a violation of the Controlled Substances Act. As stated above, the officer saw messages between Laselva and a female suspect about buying “a 60” and the female suspect stated she sold Laselva fake methamphetamine. The officer testified at the preliminary hearing he did not believe the methamphetamine was fake. The officers witnessed two transactions between the passenger of the white truck and the female suspect. The officer testified one of the other officers identified the passenger during the second transaction as Laselva. Therefore, we conclude there was a substantial basis for the officer to conclude that probable cause existed to arrest Laselva for either violating the Controlled Substances Act or conspiring to violate the Controlled Substances Act.

Finally, we conclude the district court did not abuse its discretion by finding that even if the search warrant was defective, there was a good faith exception for the officers to rely on the warrant, *see United States v. Leon*, 468 U.S. 897, 922-23 (1984), and, therefore, suppression of the evidence still would not be warranted.

Having concluded Laselva was not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. John Schlegelmilch, District Judge  
Johnston Law Offices, P.C.  
Attorney General/Carson City  
Lyon County District Attorney  
Third District Court Clerk