[Cite as *State v. Rader*, 2010-Ohio-1010.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-07-185
	:	O P I N I O N
- vs -		3/15/2010
	:	
STEPHEN B. RADER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR-2008-09-1554

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RINGLAND, J.

{¶1} Defendant-appellant, Stephen Rader, appeals his convictions in the Butler County Court of Common Pleas for three counts of child rape and 22 counts of pandering sexually-oriented material involving minors. We affirm the convictions.

{¶2} Detective Janice Jones of the Middletown Police Department received a referral from Butler County Children's Services that Rader was having sexual contact with multiple children. As part of her investigation, Jones discovered that Bryan Wells had spent time as a guest in Rader's home. Upon interviewing Wells, Jones leaned that

he had stayed in Rader's home for a few days in August 2008. During that time, Rader showed Wells his collection of child pornography and discussed having sexual contact with young children. Based on her investigation and the information received from Wells, Jones applied for and was granted a search warrant.

{¶3} After executing the search warrant, Middletown police seized various computer equipment, DVDs, VHS tapes, and a cell phone from Rader's home. The seized items contained approximately 5,000 images of child pornography.

{¶4} Rader, who was hiding in the bathroom of his home when the police executed the search warrant, asked the police if he would be given the opportunity to discuss the matter. Rader then met Jones and her partner at the police station where he waived his *Miranda* rights and eventually gave a statement. While Rader claimed that he had not actually downloaded the pornography, he admitted that he kept and accessed the images on his computer, that he liked looking at child pornography, and that he had sexual contact with a young female child.

{¶5} Middletown detectives continued their investigation and eventually learned from several young victims, including Rader's own children, that Rader demanded that the children perform oral sex on him. The children also disclosed to police that Rader had engaged in oral and anal sex with them, and also performed cunnilingus on the young girls.

{¶6} Rader was indicted on three counts of rape and 22 counts of pandering sexually-oriented matter involving a minor. After a four-day trial, a jury found Rader guilty as to each count and the trial court sentenced him to three life sentences, two of which were without parole eligibility, and eight years for each pandering charge. Rader now appeals his convictions and sentence, raising the following assignment of error:

{¶7} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION

TO SUPPRESS EVIDENCE SEIZED DURING THE SEARCH OF HIS HOME."

{¶8} In his sole assignment of error, Rader asserts that the trial court should have granted his motion to suppress because the warrant that authorized the search of his home lacked probable cause and lacked specificity. This argument lacks merit.

{¶9} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Cochran*, Preble App. No. CA2006-10-023, 2007-Ohio-3353. Acting as the trier of fact, the trial court is in the best position to resolve factual questions and evaluate witness credibility. Id. Therefore, when reviewing the denial of a motion to suppress, a reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Oatis*, Butler App. No. CA2005-03-074, 2005-Ohio-6038. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Cochran* at ¶12.

{¶10} Crim.R. 41(C) requires that a "warrant shall issue under this rule only on an affidavit or affidavits sworn to before a judge *** and state the factual basis for the affiant's belief that such property is there located." Further, the Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

{¶11} Because "probable cause is a fluid concept--turning on the assessment of probabilities in particular factual contexts--not readily, or even usefully, reduced to a neat set of legal rules," when determining whether the supporting affidavit provides

sufficient probable cause, the issuing magistrate need only make a practical, common-sense decision using a totality of the circumstances approach. *Illinois v. Gates* (1983), 462 U.S. 213, 232, 103 S.Ct. 2317; *State v. Akers*, Butler App. No. CA2007-07-163, 2008-Ohio-4164. According to Crim.R. 41(C), "the finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished."

{¶12} Rader claims that the warrant authorizing the search of his home lacked probable cause because it was supported by an affidavit containing hearsay and double hearsay. Specifically, Jones' affidavit stated that: Wells stayed with Rader in August 2008, Rader showed Wells DVDs of six-to-eight-year-old girls engaging in sexual activity with adult males, Rader told Wells that he produced the DVDs from material he downloaded on his computer, Rader kept the DVDs in cases, (some X-Box cases and others marked GV for good video), Rader kept more than 10 of the DVDs to the right of the television in the living room, and that the computer tower was located next to the dining room table in the same room as the television and was not hooked up at the time.

{¶13} At the motion to suppress hearing, Rader questioned Jones regarding the impact Wells' statements had during her investigation and the search warrant process. Regarding Wells' veracity, Jones admitted to having limited knowledge of Wells' criminal history, and that she had never used him as an informant in the past. Rader then questioned Jones at length regarding her lack of experience with confidential informants.

{¶14} However, given the full disclosure of Wells' identity in the affidavit, Wells was not a confidential informant, and instead, openly conveyed his personal and

firsthand account of his experiences while he stayed with Rader. The trial court found that Jones' affidavit supplied the necessary probable cause and that the hearsay information contained therein was properly considered by the issuing magistrate. In deciding such, the trial court relied on *State v. Rogers*, Butler App. No. CA2006-03-055, 2007-Ohio-1890, wherein this court considered the validity of a search warrant supported by an affidavit that contained hearsay. In *Rogers*, we recognized that before hearsay statements can establish probable cause, the magistrate must consider the basis of knowledge and veracity of the person offering the hearsay. Rogers challenged the warrant in his case and claimed that the hearsay contained in the affidavit by informants was insufficient to supply probable cause.

{¶15} However, this court found that the hearsay statements were reliable because they were made by persons specifically identified in the affidavit, with each person supplying detailed information and firsthand accounts. We also noted that the truthfulness of the people who had provided the hearsay statements "would have been a circumstance to be considered by the issuing magistrate, and given their similar, first person accounts, we find there was a substantial basis for a finding of probable cause." Id. at ¶ 44.

{¶16} Rader now claims that *Rogers* is distinguishable from the case at bar because in *Rogers*, the two people who provided the hearsay statements were the victims Rogers had abused, and therefore had first-hand knowledge of his crime. However, despite the fact that Wells was not one of Rader's many victims, he was still expressly identified in the affidavit, and his statements included therein were specific to his first-hand knowledge of Rader's child pornography stash. Also similar to *Rogers*, Wells gave detailed information to support Jones' claim that there was probable cause to believe that a search of Rader's living room would result in the seizure of child

pornography.

{¶17} The magistrate was able to consider Wells' basis of knowledge and veracity because Jones' affidavit contained specific information regarding Wells' knowledge of Rader's criminal activity and how he obtained that knowledge. Wells was able to state with specificity that the pornography Rader showed him portrayed six-to-eight-year-old girls performing sex acts with adult males. Wells was also able to state that Rader obtained the pornography by downloading it from his computer. Wells also specifically told Jones where Rader kept the videos, that some were in X Box cases and others were marked with GV to note a "good video," that there were more than ten, and that they were located to the right of the television. Lastly, Wells told Jones that the computer tower was next to the dining table and that it was not hooked up at the time. Therefore, based on the details provided in Jones' affidavit, the issuing magistrate was able to make a practical and common sense determination that there was a substantial basis for finding Wells' statements credible.

{¶18} We also note that in addition to the specific and first-hand knowledge he provided, Wells was not a confidential informant as Rader suggests. The trial court noted that a citizen informant is held to a lesser standard of veracity than a confidential informant, and based on the totality of the circumstances, that Wells' statements had provided probable cause. The trial court did not err in deciding as such. See, also, *Maumee v. Weisner*, 87 Ohio St.3d 295, 300, 1999-Ohio-68 (noting that Ohio appellate courts afford greater credibility to identified informants because "information from an ordinary citizen who has personally observed what appears to be criminal conduct carries with it indicia of reliability and is presumed to be reliable"); and *State v. Chamberlain* (Jan. 31, 2000), Madison App. No. CA99-01-003, 8-9, (affirming trial court's denial of appellant's motion to suppress where hearsay "information coming from

a citizen eyewitness is presumed credible and reliable, and supplies a basis for a finding of probable cause").

{¶19} We conclude that Jones' affidavit provided a substantial basis for the magistrate to conclude that there was a fair probability that evidence of pandering sexually-oriented matter involving a minor would be found at Rader's home. Further, because Wells was an identified informant and citizen eyewitnesses, and not a confidential informant, Jones did not need to provide information in the affidavit regarding his veracity.

{¶20} Rader next argues that the warrant lacked specificity because it failed to particularly describe the premises to be searched. According to the warrant, police had authority to search Rader's home listed as 209 Bavarian Street, Apartment F, Middletown, Ohio 45042. Rader now argues that the warrant failed to describe his home because it did not list a type of structure or color, and because his actual address was 209 Bavarian Drive in zip code 45044.

{¶21} Similar to the Fourth Amendment, Crim.R. 41(C) requires an underlying affidavit and warrant to "particularly describe the place to be searched." However, “the determining factor as to whether a search warrant describes the premises to be searched with sufficient particularity is not whether the description given is technically accurate in every detail but rather whether the description is sufficient to enable the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premises might be mistakenly searched which is not the one intended to be searched under the search warrant." *State v. Pruitt* (1994), 97 Ohio App.3d 258, 261-262.

{¶22} Here, there is no fear that Middletown police would have mistakenly searched the wrong address or would be confused by either the error in listing Bavarian

as a street rather than a drive, or in the zip code. Instead, the officers properly executed the search on Rader's home and showed no confusion regarding the incorrect zip code. See, also *State v. Burton*, Hamilton App. No. C-080173, 2009-Ohio-871 (upholding validity of search warrant, though it listed an incorrect zip code). Additionally, Jones had already verified through Rader's sister that he lived at 209 Bavarian, Apartment F, and we fail to see how Bavarian's designation as a street or drive had any effect on the executing officer's ability to locate and identify the premises with reasonable effort.

{¶23} Having found that the affidavit provided the requisite probable cause and that the warrant particularly described the place to be searched, Rader's assignment of error is overruled.

{¶24} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.