

STATE OF OHIO                    )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       24732

Appellee

v.

ANDRE L. FRAZIER

Appellant

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 08 06 1895(A)

DECISION AND JOURNAL ENTRY

Dated: January 20, 2010

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CARR, Judge.

{¶1} Appellant, Andre L. Frazier, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On June 5, 2008, Sergeant Jason Malick of the Akron Police Department’s Street Narcotics Unit Detail (“S.N.U.D.”), signed an affidavit for a search warrant request for Apartment #41 at 2553 Romig Road in Akron, Ohio. Andre Frazier, along with his girlfriend and son, resided at that address. A warrant was issued and, on June 6, 2008, drugs and other items were seized from Frazier’s apartment. During the course of the search, the officers determined that the occupants had access to a storage unit within the complex and filed an affidavit to obtain an additional search warrant for that unit. After the second search warrant was issued, officers recovered additional drugs and personal property.

{¶3} In the affidavit for the initial search warrant, Sergeant Malick averred that within the prior ten days, he worked with an information source that purchased crack cocaine in a controlled drug purchase at Apartment #41 at 2553 Romig Road in Akron, Ohio. Sergeant Malick further averred that, within the prior twenty-four hours, he had spoken to the information source who informed him that the occupant of the residence, Andre Frazier, possessed crack cocaine which was for sale. Furthermore, Sergeant Malick stated that the information source had provided him with information regarding drug sales and that the officer corroborated the information.

{¶4} On June 18, 2008, Frazier was indicted on a variety of charges by the Summit County Grand Jury. On July 30, 2008, Frazier filed a motion to suppress and the trial court scheduled the matter for hearing. Frazier's motion was subsequently denied by the trial court on August 18, 2008. On December 12, 2008, a supplemental indictment was filed by the State. On February 23, 2009, Frazier pleaded no contest to one count of trafficking in cocaine in violation of R.C. 2925.03(A)(C)(4), a felony of the first degree; possession of cocaine in violation of R.C. 2925.11(A)(C)(4), a felony of the second degree; two counts of aggravated possession of drugs in violation of R.C. 2925.11(A)(C)(1), felonies of the second degree; trafficking in marijuana in violation of 2925.03(A)(C)(3), a felony of the fourth degree; possession of cocaine, in violation of R.C. 2925.11(A)(C)(4), a felony of the fifth degree; trafficking in cocaine in violation of R.C. 2925.03(A)(C)(4), a felony of the fourth degree; possessing criminal tools in violation of R.C. 2923.24, a felony of the fifth degree; and possession of marijuana in violation of 2925.11(A)(C)(3), a minor misdemeanor. Frazier was sentenced to a five-year term of imprisonment.

{¶5} On appeal, Frazier raises one assignment of error.

## II.

### **ASSIGNMENT OF ERROR**

“THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN DENYING DEFENDANT’S MOTION TO SUPPRESS THE SEARCH WARRANT BASED UPON THE AFFIDAVIT’S FAILURE TO SHOW A SUBSTANTIAL BASIS FOR RELYING ON INFORMATION PROVIDED BY THE INFORMANT.”

{¶6} In his sole assignment of error, Frazier contends the trial court erred in denying his motion to suppress because the affidavit supporting the search warrant failed to adequately establish the credibility of the information source. This Court disagrees.

{¶7} An appellate court’s review of a trial court’s ruling on a motion to suppress presents a mixed question of law and fact. *State v. Long* (1998), 127 Ohio App.3d 328, 332. The trial court acts as the trier of fact during a suppression hearing and is, therefore, best equipped to evaluate the credibility of witnesses and resolve questions of fact. *State v. Hopfer* (1996), 112 Ohio App.3d 521, 548. Accordingly, this Court accepts the trial court’s findings of fact so long as they are supported by competent, credible evidence. *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594. The reviewing court “must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.” *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶8.

{¶8} It is well established that a search warrant affidavit may be based solely upon hearsay information and need not reflect the direct, personal observations of the affiant. *State v. Roberts* (1980), 62 Ohio St.2d 170, 178, citing *Jones v. United States* (1960), 362 U.S. 257, 269. In *Aguilar v. Texas* (1964), 378 U.S. 108, the United States Supreme Court outlined a two-prong test to determine if a substantial basis exists to sustain a magistrate’s reliance upon the hearsay of a confidential informant. Prior to the issuance of a search warrant, a magistrate must first be

informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he or she claimed them to be. *Aguilar*, 378 U.S. at 114; *Roberts*, 62 Ohio St.2d at 178. Second, the magistrate must be aware of some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, was credible or his or her information was reliable. *Aguilar*, 378 U.S. at 114. “Hearsay information may be considered in determining probable cause so long as the affiant presents the magistrate with the affiant’s basis of knowledge and some underlying circumstances supporting the affiant’s belief that the information is credible.” *State v. Sharp* (1996), 109 Ohio App.3d 757, 760, citing *State v. George* (1989), 45 Ohio St.3d 325, 329.

{¶9} Here, Frazier contends that the affidavit which served as the basis for the search warrant failed to establish the credibility of the information source. A review of the affidavit reveals that there was a sufficient basis from which to conclude that the confidential source’s information was reliable.

{¶10} Paragraph 2 of Sergeant Jason Malick’s affidavit states:

“Affiant, within the past ten days, went to the above described premises with an information source. The source was searched by Akron Street Narcotics officers and was found not to be in possession of any controlled substances or currency. The source was provided with APD funds. Det.Schmidt (sic) observed as the source entered the premises. Shortly thereafter the source exited the premises. Upon return, the source delivered to affiant a quantity of crack cocaine that the source stated was purchased within the premises with the funds previously provided. The source was again searched and found again not to be in possession of controlled substances or currency. The substance was field tested by Akron Street Narcotics officers and indicated a positive reaction for the presence of a controlled substance, to wit: crack cocaine.”

{¶11} Paragraph 6 of the affidavit states:

“Affiant states that the information source listed in the previous paragraphs of this affidavit has provided the affiant with information concerning the possession and sale of controlled substances in the Akron, Summit County, Ohio area, which information has been corroborated by Sergeant Jason Malick #993. Further, the

information source has displayed to specific knowledge as to the uses, effects and distribution patterns of controlled substances in Akron, Summit County, Ohio area.”

{¶12} The contents of Sergeant Malick’s affidavit made it possible for the magistrate to gain an understanding of the circumstances from which the informant concluded that narcotics were located in Apartment #41 at 2553 Romig Road in Akron, Ohio. With regard to the credibility of the information, the facts set forth in the affidavit tend to show that the source was able to successfully make a controlled drug purchase at the apartment in question. Specifically, the source was searched prior to the controlled drug purchase and was found not to be in possession of any controlled substances or currency. The source was then given APD funds and was supervised by Detective Schmidt as he entered the premises. After a short time, the source exited the premises. The source proceeded to deliver to the affiant, Sergeant Malick, a quantity of crack cocaine and indicated that the drugs had been purchased while on the premises with the funds previously provided. At this point, the source was searched a second time and, again, he was found not to be in possession of controlled substances or currency. A field test indicated a positive reaction for the presence of a controlled substance. The source also displayed knowledge regarding the possession and sale of controlled substances in the Akron area, which Sergeant Malick was able to independently corroborate. Furthermore, the source indicated that he had been in contact with the occupant of the premises, Andre Frazier, within the past twenty-four hours and that Frazier was in possession of crack cocaine and was in the process of selling the same from the location in question. The details of the controlled purchase of drugs, coupled with the interactions with the source by Sergeant Malick and Detective Schmidt, allowed the magistrate to make an independent determination that the information contained in the affidavit was credible. Therefore, the trial court did not err in denying Frazier’s motion to suppress.

{¶13} Frazier's assignment of error is overruled.

III.

{¶14} Frazier's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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DONNA J. CARR  
FOR THE COURT

MOORE, P. J.  
DICKINSON, J.  
CONCUR

APPEARANCES:

BECKY L. DOHERTY, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.