
FLORIDA CASE LAW UPDATE 17-05

Case: Castro v. State, 42 Fla. L. Weekly D1588a (Fla. 2d DCA)

Date: July 14, 2017

Subject: **Insufficient Probable Cause to Support Search Warrant of Residence**

FACTS: Castro's residence was searched pursuant to a search warrant and he was charged with trafficking in amphetamine, possession of cocaine and possession of drug paraphernalia. Castro filed a motion to suppress arguing that the search warrant lacked probable cause. The search warrant affidavit set forth the following facts in support of probable cause to search Castro's residence: That law enforcement had effectuated two drug buys from another target (not Castro) at a gas station, and that during surveillance of that target, law enforcement lost sight of his vehicle for 3-4 minutes while he was approximately .25 miles away from Castro's residence, and after the second sale (of methamphetamine) the target drove to Castro's residence, parked in front of the house, ran up to the door and got back in his car 2 minutes later. The search warrant affidavit also stated that the affiant received an anonymous tip that Castro kept meth in his home, that there were scales in the home and he sold meth in ounces. The search warrant was executed nearly a month after the day of the two controlled drug buys with the other target. The trial court denied the motion to suppress, finding that although the anonymous tip was insufficient to establish probable cause, based on the totality of the circumstances there was a factual nexus between the seller, the drugs, and the residence searched. Castro entered a plea to the charges and reserved his right to appeal the denial of the motion to suppress.

RULING: The Second District Court of Appeal disagreed with the trial court's order denying the suppression of evidence seized at Castro's residence. The appellate court concluded that the facts contained within the search warrant affidavit provided an insufficient nexus to Castro's residence.

DISCUSSION: The Second District stated that the information from the anonymous tipster was "vague" and failed to include facts such as where Castro makes drug sales, when meth was in the home, the quantity of drugs, or where in the home drugs could be found. Additionally, the tip did not indicate whether the tipster personally observed the drugs or whether he/she had been inside the home. The affidavit also failed to give any information about the reliability of the tipster. The Second District stated that when a tipster's veracity and reliability is lacking, the court must look to see if there is sufficient independent corroborating evidence. The court stated that the affiant attempted to corroborate the anonymous tip with the drug sales by the other target to law enforcement. However, as part of that operation, the only facts arguably tying Castro's house to the crime were that law enforcement lost sight of him for 3-4 minutes when he was close to Castro's residence and that after the second sale, the target went to the front door of Castro's home. However, detectives could not determine if the target entered the home or if he contacted anyone at the home. The court noted that the State's theory behind those two facts is that the target went to Castro's home to get the meth for the second sale and then returned to Castro's home to drop off the money, afterward. The Second District stated that the State's theory was speculative. The court concluded: "This one sale of half an ounce that was unconnected to Castro's residence prior to the sale was insufficient to corroborate the tip that an unspecified amount of methamphetamine was in Castro's residence at an unspecified time in the past." The court went on to point out that police surveillance did not corroborate the vague tip that meth could be found in the residence. The court said that no drug activity out of the home was noted in the affidavit and although Castro's criminal history was referenced, it did not indicate if he had a criminal history for drug offenses. Accordingly, the Second District concluded that based on the totality of the circumstances, the search warrant affidavit failed to articulate probable cause for a search warrant to be lawfully issued for Castro's residence.

Laura B. Coln
Regional Legal Advisor
Florida Department of Law Enforcement
Orlando Regional Operations Center

Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.