

FLORIDA CASE LAW UPDATE 14-01

Subject: Search Warrant for home, obtained 28 days after the second of two controlled purchases of cocaine from the house, was not stale. Totality of circumstances established probable cause that additional contraband would be located within the home.

FACTS: A confidential informant reported to the police that a female was selling crack cocaine from her home. The CI stated that he had purchased cocaine at the home multiple times during the past six months, and that the female always had cocaine available for sale. Officers set up a controlled buy between the CI and the female, which took place inside the home. A second controlled buy occurred in the home the following day. Based upon the purchases, the officer authored an affidavit seeking a warrant to search the home for additional controlled substances. The warrant was issued 28 days after the second controlled buy, and was executed 3 days later. Additional cocaine and other contraband were recovered at the premises. The defendant moved to suppress the evidence, arguing that the affidavit was insufficient to establish probable cause, and was stale due to the passage of time between the second buy and the issuance of the warrant. The trial court denied the motion, and the defendant appealed. (Williams also argued that facts undermining the credibility of the CI were excluded from the affidavit. This argument was unsuccessful, and in the interest of brevity, this update is limited to a discussion of the staleness issue.)

RULING: The 2d District Court of Appeal upheld the trial court, and ruled that the warrant, under the circumstances, was not stale.

DISCUSSION: The appellate court begins its analysis by restating the rule that a legally sufficient affidavit must, within the four corners of the document, establish two elements in order to support probable cause: first, that a particular person has committed a crime, and second, that evidence relevant to that crime is likely located at the place to be searched. (Citing *Burnett v. State*, 848 So.2d 1170 (Fla. 2d DCA 2003.)) Next, the court affirmed the “rule of thumb” within the 2d District that in order to avoid staleness, the issuance of a search warrant should generally occur within 30 days of the events described in the affidavit. *Pilienci v. State*, 991 So.2d 883 (Fla. 2d DCA 2008). Under this guidance, the warrant in the present case, being issued 28 days after the second buy, would not be voided due to staleness. The court explains, however, that this is not a bright-line rule. In fact, in *Pilienci*, the court invalidated a warrant issued 29 days after a drug buy, where the probable cause was based upon a single purchase at the location from an unidentified person on a single occasion. *Id.* at 894. In the present case, however, the totality of the circumstances establishes probable cause that additional contraband was likely to be found in the Williams home. The CI had made two separate buys at the specific location, for a particular amount of cocaine, and from an identifiable source. Of additional importance, during each buy, the defendant retrieved the drugs from a larger bag, suggesting the ability to make additional sales. Search upheld.

COMMENTS: This case reinforces the importance of articulating all relevant facts within the affidavit. Here, the observation that the drugs were taken from a larger bag in each buy was an important supporting fact which gave the appellate court good cause to uphold the warrant. Remember, a court is limited to what you say within the four corners of your affidavit; anything else you or your source knows about the case cannot be considered in evaluating the legal sufficiency of a warrant.

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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.