

Appellant-defendant Michael L. Spencer appeals his two convictions for Dealing in a Schedule I, II, or III Controlled Substance, both class A felonies.¹ Specifically, Spencer argues that the trial court erred in admitting evidence found during a search of his home because the information contained in the warrant was stale. Concluding that the information in the warrant was not stale, we affirm the judgment of the trial court.

FACTS

During eight months in 2009 and 2010, the Indiana State Police and Huntington County law enforcement officials investigated a local problem with the sale of prescription medications. In the course of their investigation, law enforcement officers put Spencer's home, which is less than 400 feet from a city park, under surveillance.

On November 12 and 18, 2009, a confidential informant purchased methadone from Spencer at Spencer's home. Specifically, on both dates, Indiana State Police Detective Josh Haber picked up the informant and took him to a meeting with three Huntington Police Department officers. The officers searched the informant before he left the meeting. The officers also gave the informant an audio recording device to covertly record the drug transactions and \$240 to purchase thirty methadone tablets. Detective Haber drove the informant to Spencer's house in an undercover vehicle and watched him walk up to the front door and into the house. After being in the house for several minutes, the informant came out through the same door he went in and walked directly to Detective Haber's car. The informant got into the car and handed the detective

¹ Ind. Code § 35-48-4-2(b).

a cellophane wrapper containing the thirty methadone pills he had just purchased from Spencer. Detective Haber took a statement from the informant on the way to another meeting with the three Huntington Police Department officers. Before the meeting, the officers searched the informant for additional money and drugs, and the informant gave the officers the recording device. Spencer was not arrested at the time.

On March 9, 2010, the State requested a search warrant for Spencer's home. In the probable cause affidavit, Detective Haber asserted he had probable cause to believe that evidence of drug activity, including controlled substances, United States Currency, records of drug transactions and/or other financial information, were concealed at Spencer's house because during a six-month period, an informant made numerous drug purchases from Spencer and others at Spencer's house. The November 12 and 18 transactions were the only transactions directly involving Spencer. In the affidavit, Detective Haber averred that based on his experience and training as a narcotics investigator, this type of evidence is commonly found in a drug trafficker's residence.

On March 11, 2010, Huntington Police Department Officers executed the warrant and arrested Spencer. During the search, the officers found a pill crusher and several empty prescription pill bottles with Spencer's name and his wife's name. Some of the prescriptions were for methadone. The officers also photographed the contents of a safe in Spencer's room. The safe contained several empty prescription pill bottles with Spencer's name, his wife's name, and his father's name. The prescriptions were for

methadone and other drugs. The officers also found a prescription pill bottle with methadone tablets in between the mattress and box springs in Spencer's bedroom.

Trial began on August 19, 2010. The informant testified about the November 12 and 18 drug transactions. He also testified without objection that he saw a safe in Spencer's room that contained pill bottles and pistols. The jury heard the audiotapes of the drug transactions, and the State introduced into evidence prescription records from five different pharmacies, which showed that Spencer filled monthly prescriptions for 180 methadone tablets, 120 hydrocodone tablets, and 90 xanax tablets, all from the same physician, at Walgreens. In addition, he filled another monthly prescription for 448 methadone tablets from another physician at CVS. A summary of Spencer's prescriptions revealed that Spencer purchased 6526 methadone tablets in eleven months in 2009. The tablets had a street value of over \$50,000.

Also, at trial, over Spencer's objection, the trial court admitted the evidence found during the search of his home, which included the pill crusher, the prescription pill bottle with methadone tablets, empty prescription pill bottles, and the photographs of the contents of the safe. The jury convicted Spencer as charged, and the trial court sentenced him to thirty-five years on each count, sentences to run concurrently. Spencer appeals.

DISCUSSION AND DECISION

I. Standard of Review

Spencer argues that the trial court erred in admitting evidence found during the search of his home. The admission of evidence is within the sound discretion of the trial

court. Sallee v. State, 777 N.E.2d 1204, 1210 (Ind. Ct. App. 2002). The trial court's decision is given great deference and will not be reversed absent a showing of manifest abuse of discretion resulting in the denial of a fair trial. Id. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. Mathis v. State, 859 N.E.2d 1275, 1279 (Ind. Ct. App. 2007).

II. Admission of Evidence

Spencer contends that the trial court erred in admitting the evidence found during the search of his home on March 11, 2010, because the search violated his federal and state constitutional rights. Specifically, Spencer contends that the search warrant was not supported by probable cause because it was based on stale information that was obtained four months before the warrant was issued.

The Fourth Amendment to the United States Constitution and article 1, section 11 of the Indiana Constitution both require probable cause for the issuance of a search warrant. Mehring v. State, 884 N.E.2d 371, 376 (2008). In deciding whether to issue a search warrant, the issuing magistrate's task is to simply make a practical, common sense decision whether, given all of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. Id. The reviewing court's duty is to determine whether the issuing magistrate had a substantial basis for concluding that probable cause existed. Id. A substantial basis requires the reviewing court, with significant deference to the magistrate's determination, to focus on

whether reasonable inferences drawn from the totality of the evidence support the finding of probable cause. Id.

Time can be a critical requirement in probable cause. Id. The general rule is that stale information cannot support a finding of probable cause. Id. However, our courts have not established a bright-line rule regarding the amount of time that may elapse between obtaining the facts upon which the search warrant is based and the issuance of the warrant. Id. Probable cause is not determined by merely counting the number of days between the occurrence of the facts relied upon and the warrant's issuance. Id. Rather, whether the information is tainted by staleness must be determined by the facts and circumstances of each particular case. Id. When making a staleness determination, we look at the nature of the crime, and the nature of the evidence seized or sought. Id. at 378.

For example, in Moran v. State, 644 N.E.2d 536 (Ind. 1994), the Indiana Supreme Court held that a three-month delay between a trash search and the issuance of a warrant did not make the warrant information stale where the nature of the crime was an ongoing marijuana operation and the nature of the evidence, including beds and other growing equipment, would not easily be moved or exhausted. Further, in Bigler v. State, 602 N.E.2d 509 (Ind. Ct. App. 1992), this Court explained that the element of time loses significance and need not weigh heavily in the determination of probable cause for the issuance of the search warrant where 1) the facts alleged in the probable cause affidavit established an ongoing amphetamine dealing operation lasting at least two years; 2) the

officers sought the warrant to search for evidence such as business and financial records, proceeds, and paraphernalia, which would prove the distribution of amphetamines had occurred; and 3) the affidavit contained the opinion of the detective, based on his experience as a narcotics investigator, that the type of evidence found was commonly found in a drug dealer's residence.

Based upon the foregoing, we conclude that the information in this case was not stale. Although a four-month delay between the drug transaction and the application for the search warrant is, on its face, cause for concern, this is just one factor in our determination of staleness. Here, we have an ongoing investigation into the sale of controlled substances. The search warrant sought controlled substances, United States Currency, records of drug transactions and/or other financial information to prove the sale of the controlled substances. Considering the nature of the crime, the nature and type of evidence sought, and the information provided by Detective Haber based on his training and experience in undercover narcotics investigations, we agree with the trial court that the four-month time period did not render the information stale. Thus, we conclude that the trial court did not err in admitting evidence found during the search of Spencer's home.

We further note that any error in the admission of this evidence would not have been grounds for reversal. The improper admission of evidence is not grounds for reversal where it is merely cumulative of other evidence admitted. Mathis v. State, 859 N.E.2d 1275, 1280 (Ind. Ct. App. 2007). Here, the informant detailed two drug

transactions with Spencer, and the jury heard audiotapes of the transactions. Spencer testified without objection that he saw prescription drug bottles and pistols in Spencer's safe. In addition, prescription records from several pharmacies revealed Spencer had multiple prescriptions for methadone from different physicians and purchased 6526 methadone tablets in eleven months in 2009. The pill crusher, prescription bottles, and photographs of the interior of Spencer's safe were merely cumulative of the testimony and evidence admitted at trial.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.