

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 27, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1573-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS J. SCHEIDEGGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Iowa County:
MICHAEL T. KIRCHMAN, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Thomas Scheidegger appeals from a judgment convicting him on several criminal charges. All resulted from evidence seized during a search of Scheidegger's residence and the surrounding property. On appeal, he challenges the trial court's refusal to suppress that evidence. We affirm.

¶2 Tom Rastall, an agent of the Wisconsin Department of Transportation, filed the warrant application. It identified the premises occupied by Scheidegger and owned by his mother, Monica Weier, as a house, a house trailer, a pole barn, and several outbuildings and sheds. The stated purpose of the search was to uncover evidence that Scheidegger was operating an unlicensed salvage business, possibly involving stolen vehicles and vehicle parts.

¶3 The application included information attributed to Iowa County Zoning Administrator, Scott Godfrey, that Scheidegger and Weier lived on the property, that Scheidegger controlled most of it, and that Godfrey observed numerous junked cars, car parts, and a copper smelter when he inspected the property.

¶4 Rastall added that he reviewed a police report describing an instance eighteen months earlier when Scheidegger sold a car part on the premises. He also reported that he had obtained a written list of sixty-six junk vehicles that Scheidegger had sold to a recycling company during the last thirteen months. Rastall vouched for the accuracy of this information and added that based on his experience “it is common to find stolen vehicles and stolen vehicle parts, or vehicles with altered or removed identification numbers, in unlicensed salvage yards.”

¶5 The trial court granted the application and issued a warrant authorizing a search of the premises. Officers were “specifically authorized” to inspect the vehicles on the property for evidence of removal or alteration of vehicle identification numbers, and for other evidence that they were stolen.

¶6 In the ensuing search, police officers seized a number of firearms from the main house, 193 grams of marijuana found mainly in the trailer, drug

paraphernalia, numerous vehicle titles, and numerous junk cars. The resulting sixteen charges against Scheidegger included twelve counts of possessing a firearm by a felon, possessing marijuana, possessing drug paraphernalia and doing business as an unlicensed salvage dealer.

¶7 Scheidegger moved to suppress all of the seized evidence, and challenged the validity of the search warrant and the scope of the search on a number of grounds. The trial court denied the motion, and Scheidegger subsequently entered a guilty plea on several of the charges. On appeal, he contends that the warrant contained stale, irrelevant and deceptive information; that the warrant was facially invalid because it was a “general warrant in application”; that it did not state probable cause that evidence of an illegal salvage yard could be found on the premises; that the application did not state probable cause to search his residence; and that the warrant did not authorize a search inside the buildings on the property.

¶8 The test for issuing a search warrant is whether probable cause exists to believe that objects linked to the commission of a crime are likely to be found in the place designated in the warrant, based on the totality of the circumstances set forth in the warrant application. *See State v. Ehnert*, 160 Wis. 2d 464, 470, 466 N.W.2d 237 (Ct. App. 1991). Probable cause is a “flexible, common-sense measure of the plausibility of particular conclusions about human behavior.” *State v. Kerr*, 181 Wis. 2d 372, 379, 511 N.W.2d 586 (1994). Doubtful or marginal cases are largely resolved by affirming the decision to issue the warrant. *See United States v. Ventresca*, 380 U.S. 102, 109 (1965).

¶9 Here, the warrant application identified operating as an unlicensed motor vehicle salvage dealer as a suspected crime. *See WIS. STAT. § 218.205(1)*

(1997-98).¹ A “motor vehicle salvage dealer” is one who purchases and resells motor vehicles for scrap or who conducts the business of scrapping or who sells parts of scrapped motor vehicles. *See* WIS. STAT. § 218.20(1r). Evidence of a large number of junked vehicles on Scheidegger’s premises, his frequent sales of such vehicles, and his sale of at least one auto part on the premises, provided probable cause to believe that objects linked to unlawful salvage operations were likely to be found on the premises. Therefore, we conclude the warrant application provided probable cause to issue the warrant.

¶10 Scheidegger also failed to demonstrate that the warrant was issued on stale, irrelevant and deceptive information. Scheidegger contends that the court was bound to ignore the information regarding his auto parts sale, because the alleged sale took place eighteen-months earlier. Information is not stale, however, merely because it concerns events that occurred well before the warrant was issued. “If such past fact contributes to an inference that probable cause exists at the time of the application, its age is no taint.” *State v. Moley*, 171 Wis. 2d 207, 213, 490 N.W.2d 764 (Ct. App. 1992) (citation omitted). Such is the case here.

¶11 Scheidegger next argues the irrelevance of information that he kept junk vehicles on his property and frequently sold them. To him, that does not amount to evidence of illegal business transactions. That inference is readily available, however, from Godfrey’s observations of some fifty junked vehicles on the property and the information that Scheidegger frequently sold junked vehicles. Support for a search warrant is found in considering “the totality of the circumstances.” *See Ehnert*, 160 Wis. 2d at 469.

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶12 Scheidegger failed to prove that Rastall misrepresented facts in the warrant application. Counsel for Scheidegger questioned Rastall on two alleged misrepresentations in the course of a hearing held pursuant to *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978). The first was his assertion that Scheidegger sold an auto part to someone eighteen months earlier, when Rastall knew that Scheidegger, in fact, traded it in a barter exchange. However, the pertinent fact was Scheidegger's receipt of value for the part, whether in money or in goods.

¶13 The second alleged misrepresentation was Rastall's statement that he obtained a written list of sixty-six vehicles Scheidegger had sold to a recycling company. In fact, Rastall received a written list of thirty-five payments the recycler made to Scheidegger, and an oral representation that the payments were for sixty-six vehicles. While Rastall described the information he received inaccurately, the essential fact was not misrepresented; the witness told Rastall that Scheidegger sold her company sixty-six cars and provided written proof of the transactions, and that is what he reported in the warrant application. There was no misrepresentation.

¶14 Furthermore, the warrant was not an unconstitutional general warrant. “[N]o Warrants shall issue, but [one] *particularly describing* the place to be searched, and the persons or *things to be seized.*” *Myers v. State*, 60 Wis. 2d 248, 260-61, 208 N.W.2d 311 (1973) (emphasis in the original) (citation omitted). Here, the warrant described Scheidegger's premises in detail, identified the buildings on it, and granted permission to seize motor vehicles, vehicle parts, evidence of vehicle and vehicle part transactions, written and computer records, and documents pertaining to ownership of the property. Under any reasonable view, the warrant was sufficiently particular to satisfy constitutional requirements.

¶15 The warrant application provided probable cause to search Scheidegger's residence. As noted, the application provided probable cause that Scheidegger was operating an unlicensed salvage yard. One could reasonably infer that evidence of the operation included various documents. The most reasonable and logical place to find those documents was inside the suspect's residence, which was adjacent to the alleged salvage operation.

¶16 The warrant expressly authorized a search inside the buildings on the property. The warrant specifically described the buildings on the property and directed officers "to search the said premises." Scheidegger's contention that the warrant authorized a search of only the grounds and not the buildings is without merit.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

