

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 7, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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

No. 97-2422-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

**JENNIFER R. GONZALEZ, F/K/A JENNIFER R.
ALDINGER,**

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Taylor County:
DOUGLAS T. FOX, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Jennifer Gonzalez appeals a judgment convicting her of three counts of delivering marijuana and one count of contributing to the delinquency of a minor. She argues that: (1) physical evidence seized pursuant to a search warrant should have been suppressed because the affidavit in support of

the warrant was deficient; (2) a statement she made to the police should have been suppressed as a fruit of the illegal search and because it was not given freely and voluntarily; and (3) the State presented insufficient corroborative evidence to support the convictions. We reject these arguments and affirm the judgment.

The warrant was properly issued based on the affidavit of deputy Gary Krueger, who stated that a confidential informant told Krueger that he observed Gonzalez sell marijuana to a third party. The informant knew from personal experience what marijuana was, and the third party also told the informant that the substance was marijuana. The informant gave detailed information about where the marijuana would be found in Gonzalez's home. Krueger stated that he believed the confidential informant's statements were true and reliable because he has relied upon the informant's statements in the past and because the statements are based on the informant's personal knowledge, information and beliefs.

Gonzalez argues that these statements are deficient because they do not state that the informant's previous statements had been proven to be truthful and because the affidavit contained no recitations to indicate that the informant could identify marijuana and contained no field tests or scientific tests. The trial court properly denied the motion to suppress the physical evidence seized pursuant to the search warrant. The affidavit in support of the warrant adequately established the informant's ability to identify marijuana and the informant's reliability. Probable cause is not a technical, legalistic concept, but a flexible, common sense measure of the likelihood that contraband will be found. *See Texas v. Brown*, 460 U.S. 730, 742 (1983); *State v. Petrone*, 161 Wis.2d 530, 547-48, 468 N.W.2d 676, 682 (1991). Probable cause deals with practical considerations of everyday life on which reasonable and prudent men, not technicians, must act.

State v. Wisumierski, 106 Wis.2d 722, 739, 317 N.W.2d 484, 492 (1982). An application for a search warrant must be interpreted from the perspective of reasonable law enforcement officers engaged in the pragmatic task of uncovering evidence of criminal activity, rather than the hypertechnical perspective of legal scholars. *Brown*, 460 U.S. at 742; *State v. Starke*, 81 Wis.2d 399, 410, 260 N.W.2d 739, 745 (1978). The informant's knowledge from "personal experience" of what marijuana and a "pot" pipe look like, his detailed description of the box half full of baggies containing marijuana and a marijuana pipe, his statement that marijuana was grown in the house by its occupants, his personal observations of a sale of a bag of the substance and Krueger's statement that he has relied on the informant in the past satisfy the requirement that there be probable cause to believe that objects linked to the commission of a crime will be found in the place to be searched at the time the warrant is issued. *See State v. DeSmidt*, 155 Wis.2d 119, 131-32, 454 N.W.2d 780, 785 (1990).

The trial court properly denied Gonzalez's motion to suppress her confession. Gonzalez argues that the statement she made to the police in which she admitted selling marijuana on three occasions, twice to a juvenile, was the fruit of an illegal search and was not freely given. Because we have upheld the validity of the search, the confession is not a "fruit of the poisonous tree." The record does not support Gonzalez's argument that the confession was not given freely and voluntarily. Gonzalez was awakened by the police executing the search warrant in the middle of the afternoon. Although she was initially dressed only in a T-shirt and panties, the officers allowed her to dress before she was taken to a squad car and questioned. When the police entered they had guns drawn, but put them away once the home was secured. Gonzalez has not presented any

affirmative evidence of improper police practices or coercive activity. *See State v. Clappes*, 136 Wis.2d 222, 235-36, 239, 401 N.W.2d 759, 765, 767 (1987).

Gonzalez argues that the State presented insufficient corroborating evidence to support the conviction.¹ A confession must be corroborated as to some significant fact before it will support a conviction. *See Holt v. State*, 17 Wis.2d 468, 480, 117 N.W.2d 626, 633 (1963). Corroboration can be much less than what is necessary to establish the crime independent of the confession. *Id.* Whether the evidence presented meets the corroboration standard is a question of law. *Barth v. State*, 26 Wis.2d 466, 468, 132 N.W.2d 578, 580 (1965).

Other evidence adequately corroborates Gonzalez's confession. The marijuana and baggies seized from Gonzalez's home, a statement by her boyfriend, now husband, that she twice sold marijuana to a juvenile and the testimony of Davida Thompson corroborate the confession. Thompson testified that she accompanied two men to Gonzalez's home when they wanted to buy "pot" from her. Although Thompson did not witness the sale, the two men had marijuana when they left Gonzalez's home, allowing the inference that the men procured the marijuana from Gonzalez. This evidence corroborates significant aspects of Gonzalez's statement to the police and, together with her confession, constitutes sufficient evidence to support the convictions.

¹ Gonzalez also argues that the information should have been dismissed because the State presented insufficient corroboration at the preliminary hearing. A confession does not have to be corroborated by independent evidence at a preliminary hearing. *See State v. Fry*, 129 Wis.2d 301, 305, 385 N.W.2d 196, 199 (Ct. App. 1985). Furthermore, any defect in the preliminary hearing was cured by the conviction resulting from a fair and errorless trial. *See State v. Webb*, 160 Wis.2d 622, 628, 467 N.W.2d 108, 110 (1991).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

