

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 5, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

**Nos. 00-2695-CR
00-2696-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

No. 00-2695-CR

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JYWANZA C. CARTER,

DEFENDANT-RESPONDENT.

No. 00-2696-CR

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JAMES M. WELTER,

DEFENDANT-RESPONDENT.

APPEALS from an order of the circuit court for Brown County:
SUE E. BISCHHEL, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The State appeals an order suppressing evidence that was seized from Jywanza Carter’s home pursuant to a search warrant. As a result of the search, Carter and James Welter were charged with the burglary. The trial court concluded that the affidavit in support of the warrant failed to establish probable cause that a confidential informant was reliable and that evidence sought would be found in Carter’s home. Because we conclude that the affidavit establishes probable cause, we reverse the order and remand for further proceedings.

¶2 When considering whether a magistrate properly issued a search warrant, this court’s duty is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *See State v. Kerr*, 181 Wis. 2d 372, 378, 511 N.W.2d 586 (1994). We must determine whether the magistrate was “apprised of sufficient facts to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that they will be found in the place to be searched.” The magistrate’s task is simply to make a practical, common sense decision whether, given all of the circumstances set forth in the affidavit, including the informant’s veracity, there is a fair probability that evidence of a crime will be found in a particular place. *See id.* at 379. We give great deference to the magistrate’s determination of probable cause. *See State v. DeSmidt*, 155 Wis. 2d 119, 132, 454 N.W.2d 780 (1990).

¶3 The affidavit submitted in support of the search warrant stated probable cause to believe that evidence relating to a burglary would be found at

Carter's home. The affidavit recited the contents of several police reports that contained the following information. A Dairy Queen store employee discovered a broken window and called the sheriff. A deputy observed fresh pry marks on the door and two sets of footprints in the snow leading from the store. Employees reported missing a safe containing approximately \$1,200 in currency, payroll checks and gift certificates. The safe also contained keys. An employee stated that Carter, who was also employed at the Dairy Queen, told her that he needed \$600 by February 22, three days after the break-in. Carter had last been to work the day before the break-in and did not report to work as scheduled two days after the burglary. A person identifying himself as Carter's friend called the store and claimed that Carter was visiting his mother in the hospital. When the employee attempted to call Carter at his residence, Carter's roommate said that Carter was at work at the Dairy Queen.

¶4 The affidavit also recites that the sheriff's officer reviewed information from a confidential informant who indicated that sometime after the burglary he or she was at Carter's home and Carter admitted "we broke into the Dairy Queen where I work." Carter produced his wallet containing a large amount of money and claimed that it contained \$400.

¶5 The trial court incorrectly focused on the confidential informant's reliability. In *Illinois v. Gates*, 426 U.S. 213, 239 (1983), the Supreme Court abandoned its previous rulings that focused on an informant's reliability and instead turned to a "totality of the circumstances" test for probable cause. Here, the affidavit established that Carter needed a large amount of money before the burglary and possessed a large amount after the burglary. The magistrate could reasonably find that Carter lied about his sick mother to avoid going to work after the burglary. His statement to the informant "we broke into the Dairy Queen

where I work” displays knowledge of the crime, the fact that more than one perpetrator was involved and that the premises was broken into rather than entered by use of a key. The large amount of money he displayed in his wallet confirmed his statement. Under all of these circumstances, the issuing magistrate reasonably found probable cause that Carter was involved in the burglary.

¶6 Relying in part on this court’s decision in *State v. Ward*, 222 Wis. 2d 311, 326-27, 588 N.W.2d 645 (Ct. App. 1998), the trial court concluded that the affidavit did not show a fair probability that items taken from the Dairy Queen would be found at Carter’s home. The court noted that it would be just as logical a conclusion that Carter’s accomplice retained these items. This court’s decision in *Ward*, however, was overturned. *See State v. Ward*, 2000 WI 3, ¶34, 231 Wis. 2d 723, 604 N.W.2d 517. The Wisconsin Supreme Court held that, if a reasonable inference can be drawn that evidence of a crime may be found in the place to be searched, a warrant can be issued even if it would be reasonable to believe evidence might be found in another location as well. *Id.* Because the affidavit in support of the warrant establishes a substantial basis for the magistrate to conclude that Carter was involved in the burglary, it also reasonably allows the inference that the stolen items and shoes that left footprints in the snow would be found in Carter’s home.

By the Court.—Order reversed and cause remanded for further proceedings.

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

