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ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-12-1079

WILLIAM NICKELS COLLINS APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** June 19, 2013 APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. CR 2011-457] HONORABLE CHARLES E. CLAWSON, JR., JUDGE AFFIRMED

RITA W. GRUBER, Judge

William Nickels Collins entered a conditional guilty plea to possession of a controlled substance and possession of drug paraphernalia, reserving his right to appeal the circuit court's denial of his motion to suppress items seized in his residence that led to the charges against him. The items were discovered by officers executing a search warrant based on probable cause to believe that evidence of first-degree murder existed in the residence.[1] Mr. Collins contends on appeal that the circuit court erred in denying his motion to suppress evidence because (1) information in the affidavit supporting the search warrant violated his right of spousal privilege and should not have been considered in the application for the search warrant, and (2) the affidavit's additional information was not sufficient to support granting the warrant. We affirm.

In deciding whether to issue a warrant, the magistrate should make a practical,

[1]This appeal before us does not involve the murder case.

common-sense determination based on the totality of the circumstances set forth in the affidavit. *Morgan v. State*, 2009 Ark. 257, at 11, 308 S.W.3d 147, 155. Thus, when reviewing the denial of a motion to suppress evidence, the appellate court conducts a de novo review based on the totality of the circumstances and will reverse only if the circuit court's ruling is clearly against the preponderance of the evidence. *Id.* Issues regarding credibility of witnesses testifying at a suppression hearing are within the province of the circuit court, and any conflicts in the testimony are for that court to resolve. *Id.* at 12, 308 S.W.3d at 155. Appellate review of the existence of probable cause to support a search or seizure is liberal rather than strict. *Laime v. State*, 347 Ark. 142, 153, 60 S.W.3d 464, 472 (2001).

Confidential communication between a husband and wife is privileged under Arkansas Rule of Evidence 504:

> (a) Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.
>
> (b) General Rule of Privilege. An accused in a criminal proceeding has a privilege to prevent his spouse from testifying as to any confidential communication between the accused and the spouse.
>
> (c) Who May Claim the Privilege. The privilege may be claimed by the accused or by the spouse on behalf of the accused. The authority of the spouse to do so is presumed.
>
> (d) Exceptions. *There is no privilege under this rule in a proceeding in which one spouse is charged with a crime against* the person or property of (1) the other, (2) a child of either, (3) *a person residing in the household of either*, or (4) a third person committed in the course of committing a crime against any of them.

Ark. R. Evid. 504 (2012) (emphasis added).

In the present case, Investigator Matt Rice of the Faulkner County Sheriff's Office was the affiant who requested the search warrant for appellant's residence in Vilonia, Arkansas.

Fact 3 of his affidavit stated that an anonymous caller to the Central Arkansas Crime Stoppers Tip Line identified "Carrisa from Cabot" as a murder victim and appellant as a suspect. Fact 8 stated that law-enforcement officers interviewed appellant's wife at the Cabot Police Department during their process of investigating the homicide and that she told them she had seen Carrisa at the Collinses' residence. Further, according to Fact 8:

> Bonnie [appellant's wife] said that William Collins brought Carrisa to the residence and said that she would be staying there for a while. Bonnie Collins also stated that there was blood evidence on the ceiling, wall, floor, and carpet. . . . Bonnie Collins also said that the bloody tennis shoes belonging to William Collins are under the bed in the master bedroom. Bonnie Collins said that William Collins took her to Judsonia to "see Carrisa." When Bonnie began to argue about seeing William's "girlfriend" they turned around, but was told by William "don't worry she can't talk anymore" and "I stomped her."

A magistrate signed the search warrant that resulted in seizure of the evidence supporting the drug charges against appellant. In a letter opinion and written order entered on March 28, 2012, the circuit court denied appellant's motion to suppress the evidence. Referring to conclusions outlined in its opinion letter, the court found that "the affidavit for the search warrant was sufficient and the statements given by Ms. Collins do not violate the husband/wife privilege for this proceeding and would fall under the exception . . . in Arkansas Rule of Evidence 504(d)(3)."

Spousal Privilege

Appellant contends that the circuit court violated his right of spousal privilege by considering his wife's statement that he told her, after bringing Carissa to the residence, "she would be staying there for a while," and later told his wife not to worry because Carissa "can't talk anymore . . . I stomped her." He argues that this confidential information was privileged

under Rule 504. The State contends, as it did in its response to the motion to suppress and during the suppression hearing, that appellant's confidential statements fell within the exception of 504(d)(3) because the victim had been residing in the household of appellant and his wife. He does not challenge the court's finding that the statements fell within the exception of 504(d)(3).

We will not make appellant's argument for him that the exemption did not apply and that the statements at issue did not fall within the exception. *See Gulley v. State*, 2012 Ark. 368, 423 S.W.3d 569 (An argument is not preserved for appellate review unless the trial court rules on the specific objection raised by the appellant.); *Gilliland v. State*, 2010 Ark. 135, 361 S.W.3d 279 (observing that an argument is not preserved for appeal absent a specific objection sufficient to apprise the trial court of the particular error alleged). Even if appellant had preserved an argument that the exemption does not apply, we would not agree. In *Munson v. State*, 331 Ark. 41, 959 S.W.2d 391 (1998), a sexual crime occurred against the sister of appellant's wife four days after her arrival in the couple's home. Our supreme court applied Rule 504(d)(3)'s exception to the privilege for confidential communications between husband and wife because the victim's temporary residence presented appellant with the same opportunity he would have had if she had intended to remain in the household indefinitely. In the present case, we agree with the State that the circuit court's application of the exception—because the victim lived in the spousal home—is consistent with the decision of the *Munson* court. Because we affirm the circuit court's finding that the confidential statements were excepted from the privilege under Rule 504(d)(3), we need not address

appellant's point contending that additional evidence in the affidavit was insufficient to support issuing the search warrant.

Affirmed.

PITTMAN and WYNNE, JJ., agree.

Stephen D. Ralph, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rebecca B. Kane*, Ass't Att'y Gen., for appellee.