

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SYLVESTER SHEPPARD,

Defendant-Appellant.

UNPUBLISHED

August 13, 1999

No. 207545

Kalamazoo Circuit Court

LC No. 96-000691 FH

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2). The trial court sentenced defendant as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to three to thirty years' imprisonment. We affirm.

Defendant first argues that the trial court abused its discretion in denying defendant's motion to quash the complaint and warrant. We review the trial court's decision on a motion to quash to determine whether the district court abused its discretion. *People v Hamblin*, 224 Mich App 87, 91; 568 NW2d 339 (1997). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Pursuant to MCL 764.1a(1); MSA 28.860(1)(1), a magistrate shall issue an arrest warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. When an arrest warrant is requested, the information presented to the magistrate must contain the operative facts and circumstances relied on by the complaining witness to show probable cause, and not merely that witness' conclusions that the defendant committed a crime. The sources of the information should also be indicated. *People v Hill*, 44 Mich App 308, 315; 205 NW2d 267 (1973), overruled in part on other grounds in *People v Mayberry*, 52 Mich App 450; 217 NW2d 420 (1974).

Defendant maintains that the complaint and testimony presented at the probable cause hearing did not meet the minimum standards under *Hill* for the issuance of an arrest warrant. We disagree. The

complaint alleges that defendant “did break or enter without permission, a dwelling located at 134 E. Ransom, with intent to commit a larceny therein, while Joel Phelps and/or Kathleen Pike was lawfully present.” The complaint further alleges that defendant “did commit the crime of larceny in a dwelling house by stealing” various listed items. In addition, Detective DeLeeuw testified that a witness observed a man flee from his neighbor’s house during a burglary, a dog tracked the man to defendant’s sister’s house, and the witness identified defendant as the person that broke into the neighbor’s house. Contrary to defendant’s assertion, the complaint and testimony were sufficient to enable the magistrate “to make the judgment that the charges [were] not capricious and [were] sufficiently supported to justify bringing into play the further steps of the criminal process.” *Hill, supra* at 312, quoting *Jaben v United States*, 381 US 214, 224-225; 85 S Ct 1365, 1371; 14 L Ed 2d 345, 353 (1965). Accordingly, the trial court did not abuse its discretion in denying defendant’s motion to quash.¹

Defendant also argues that the trial court erred in failing to quash the warrant because the complaint did not sufficiently apprise him of the charges against him. We find no merit to this assertion. The complaint, as well as the arrest warrant, was sufficient to notify defendant of the nature of the accusation against him. See *People v Maki*, 245 Mich 455, 461; 223 NW 70 (1929); *People v Kearns*, 2 Mich App 60, 63; 138 NW2d 564 (1965).

In his final issue, defendant contends that the trial court erred in denying his motion to suppress an in-court identification by the eyewitness. On review, the trial court’s decision to admit identification evidence will not be reversed unless it is clearly erroneous. *People v Kurylczuk*, 443 Mich 289, 303; 505 NW2d 528 (1993).

Defendant claims that the identification was improper because counsel was not present. However, this Court has held that a defendant’s right to counsel is not implicated where the police conduct a prompt, on-the-scene identification. *People v Winters*, 225 Mich App 718, 727; 571 NW2d 764 (1997). In the present case, Officer LeRoy estimated that approximately forty-five minutes passed between the time that he arrived at the scene of the crime and the time the witness was taken to identify the suspect in custody. Because the identification “permit[ted] the police to immediately decide whether there [was] a reasonable likelihood that the suspect [was] connected with the crime and subject to arrest, or merely an unfortunate victim of circumstances,” *id.* at 728, we conclude that the identification constituted a necessary and reasonable police practice and did not violate defendant’s rights. See *id.* at 728-729. Accordingly, the trial court’s decision to admit the identification evidence is not clearly erroneous.

Affirmed.

/s/ Gary R. McDonald

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

¹ Defendant alleges error because the magistrate was not presented with any information regarding the witness’ credibility. However, *Hill* only requires such information when the source is an informant, rather than an eyewitness as in the present case. See *Hill, supra*.