

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOSEPH L. GORDON,

Defendant-Appellee.

UNPUBLISHED

November 19, 1999

No. 217330

Wayne Circuit Court

LC No. 98-006837

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver 650 or more grams of cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). The trial court granted defendant's motion to quash the search warrant and suppress evidence and dismissed the charges by holding that the search warrant did not contain sufficient evidence of reliability to establish probable cause. The prosecution appeals as of right, and we reverse.

The prosecution argues that the trial court failed to afford the proper degree of deference to the magistrate's decision to issue a search warrant when the trial court narrowly construed the facts contained within the affidavit in support of the search warrant. We agree. In reviewing a magistrate's decision to issue a search warrant, the search warrant and underlying affidavit must be evaluated in a commonsense and realistic manner. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). This Court must then determine whether a reasonably cautious person could have concluded, under the totality of the circumstances, that there was a substantial basis for the magistrate's finding of probable cause. *Id.* The trial court's findings of fact in ruling on a motion to suppress evidence is reviewed for clear error, while the ultimate decision regarding a motion to suppress is reviewed de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

A search warrant affidavit may be prepared based on information provided to the affiant by an unnamed person. MCL 780.653; MSA 28.1259(3). However, the affidavit must contain sufficient facts from which a magistrate could conclude that the information supplied by the unnamed person was based upon personal knowledge and that either the unnamed person was credible or that the

information was reliable. *Id.*; *Echavarria, supra* at 366. Personal knowledge should be derived from the facts contained within the affidavit, not merely the conclusion that the informant has personal knowledge. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). However, personal knowledge may be inferred from the stated facts in the affidavit. *Id.*

In the present case, the unnamed informant's personal knowledge could be inferred from the facts stated within the affidavit. The affiant of the search warrant, Officer John Hall, stated that he had been working with a reliable and credible informant, who had provided information regarding at least five major drug dealers. Hall also indicated that he was familiar with these drug dealers through independent knowledge. Additionally, the informant had provided information to Officer Hall which had, on at least one occasion, led to an arrest for controlled substance violations. Informant advised Officer Hall that "Tony" was dealing drugs out of the home located at 12377 Santa Rosa and could be located through a specific telephone number. The home and telephone number were registered to defendant, Tony's cousin. Tony told informant that there was cocaine at defendant's home, and Tony would deliver the cocaine from defendant's home in his Expedition. The drug sales were transacted in brown paper bags. On March 8, 1998, Tony advised informant that cocaine was available for sale at defendant's residence, and Tony could be reached at defendant's telephone number. The specificity of this information supported a finding that the informant spoke with personal knowledge. *Stumpf, supra*, at 223.

The trial court held that the search warrant affidavit did not establish that the informant was credible. However, in examining the search warrant affidavit, the magistrate must find that the information supplied was based on personal knowledge and that *either* the unnamed person was credible *or* the information was reliable. MCL 780.653; MSA 28.1259(3); *People v Poole*, 218 Mich App 702, 706; 555 NW2d 485 (1996). A search warrant may issue where police conduct an independent investigation to verify the information supplied by the informant. *People v Harris*, 191 Mich App 422, 425-426; 479 NW2d 6 (1991).

In *People v Lucas*, 188 Mich App 554, 569-570; 470 NW2d 460 (1991), the informant identified the defendant as a dealer of large quantities of cocaine and described the defendant in detail, which included the defendant's appearance, address and the type of car he drove. The informant also arranged to make a purchase of drugs from the defendant the next day. This information was verified by police through investigation and surveillance. *Id.* In the present case, Officer Hall verified that the telephone number referenced by Tony was issued to defendant at 12377 Santa Rosa, which was also defendant's residence. Officer Hall conducted surveillance of that residence and observed a vehicle registered to defendant, as well as Tony's Expedition parked on the street in front of 12377 Santa Rosa. Officer Hall observed a person, who fit the description of Tony, place a brown paper bag in the back of his vehicle. This independent police investigation substantially verified the information supplied by the informant. *Id.* Accordingly, the search warrant provided sufficient factual information from which the magistrate could have concluded that the informant spoke with personal knowledge and that the information was reliable. MCL 750.653(b); MSA 28.1259(3)(b); *Powell, supra* at 522.

The trial court also granted defendant's motion to suppress based on the affiant's statement that he had worked with the informant in "past weeks," but failed to specify the exact time frame of the

contact. However, a lapse in time between the occurrence of events and the issuance of the warrant does not automatically render a warrant stale. *People v Humphrey*, 150 Mich App 806, 813; 389 NW2d 494 (1986). The age of the information is not determinative, but rather, must be evaluated with the particular circumstances of the case. *Stumpf, supra* at 226. “The circumstances will vary depending upon such factors as ‘whether the crime is a single instance or an ongoing pattern of protracted violations, whether the inherent nature of a scheme suggests that it is probably continuing, and the nature of the property sought, that is, whether it is likely to be promptly disposed of or retained by the person committing the offense.’ ” *Id.*

In the present case, Officer Hall did not specifically delineate the exact time frame of his involvement with the informant. However, Officer Hall indicated in the search warrant affidavit that he investigated the informant’s facts on February 17, 1998, and February 27, 1998. This investigation corroborated the informant’s description of Tony, defendant’s residence at 12377 Santa Rosa from which brown paper bags were carried by Tony, the telephone number registered to defendant which was used to conduct business, and the vehicle involved, an Expedition. On March 8, 1998, the informant advised Officer Hall that Tony had cocaine available for sale at the 12377 Santa Rosa residence. On March 9, 1998, the magistrate authorized the search warrant. The circumstances of the information provided indicated that the inherent nature of the crimes involved continuing drug sales, and the failure to delineate an exact time frame of contact with the informant was not fatal. Based on the totality of the circumstances and giving deference to the magistrate’s decision, there was sufficient probable cause to search defendant’s residence. *Stumpf, supra* at 227. The trial court erred in granting defendant’s motion to suppress evidence. *Darwich, supra* at 637.

Reversed.

/s/ Harold Hood

/s/ Kathleen Jansen