

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DANTOUS YOUNG,

Defendant-Appellant.

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UNPUBLISHED

March 7, 2000

No. 206078

Kent Circuit Court

LC No. 96-007714-FH

Before: Hood, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of possession with intent to deliver more than 50 grams but less than 225 grams of a mixture containing cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and maintaining a house for the purpose of keeping or selling cocaine, MCL 333.7405(d); MSA 14.15(7405)(d). Pursuant to the subsequent offender provision of the controlled substance provisions of the Public Health Code, MCL 333.7413(2); MSA 14.15(7413)(2), defendant was sentenced to concurrent prison terms of ten to twenty-five years for the possession with intent to deliver conviction, and one to four years for the maintaining a drug house conviction. We affirm.

Defendant challenges only the trial court's denial of his motion to suppress evidence obtained under a search warrant. In the affidavit supporting the warrant, the affiant, a Grand Rapids police officer assigned to the department's vice squad, made reference to two unnamed informants. One was an informant who had been the source of credible information in the past. The other was identified as an "unwitting informant." The affidavit stated that within the past thirty-six hours, a drug buy was made at a residence located at 11 Eastern Avenue SE. When the informant and the unwitting informant arrived at the location, the unwitting informant did not let the informant enter the residence. The unwitting informant then entered the residence and purchased an unspecified amount of cocaine. Defendant contends that because the affidavit did not indicate that the informant spoke from personal knowledge or that the unwitting informant was credible or his information reliable, the affidavit did not satisfy the requirements of MCL 780.653; MSA 28.1259(3), and thus did not support a finding of probable cause to search the suspect premises. We disagree.

When reviewing a magistrate's determination that probable cause to search existed, "a search warrant and the underlying affidavit are to be read in a common-sense and realistic manner." *People v Russo*, 429 Mich 584, 604; 487 NW2d 698 (1992). On review, this Court determines "whether a reasonably cautious person could have concluded that there was a 'substantial basis' for the finding of probable cause." *Id.* at 603, quoting *Illinois v Gates*, 462 US 213, 238; 103 S Ct 2317; 76 L Ed 2d 527 (1983).

MCL 780.653; MSA 28.1259(3) provides in pertinent part:

The magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:

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(b) If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

This Court has consistently observed that pursuant to MCL 780.653(b); MSA 28.1259(3)(b), a search warrant affidavit that has been prepared on the basis of information provided to the affiant by an unnamed source "must provide sufficient facts from which a magistrate could find that the information supplied was based on personal knowledge and that either the unnamed person was credible or that the information was reliable." *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). Accord *People v Poole*, 218 Mich App 702, 706; 555 NW2d 485 (1996).

After reviewing the affidavit, we conclude that it contained sufficient information from which the magistrate could conclude that the informant was credible and that the information supplied was based on the informant's personal knowledge. The affiant stated that he had known the informant for three years and that during that time the affiant had never given the police false information. Indeed, the affiant indicated that the informant's prior tips had lead to "78 controlled purchases of cocaine." Further, the affiant stated that information the informant had given on thirty drug dealers had been independently verified by the affiant. We believe this information supplies ample evidence from which the magistrate could conclude that the informant was credible.

We also believe that sufficient information was presented to support a finding that the information about drug dealing at 11 Eastern Avenue SE was based on the informant's personal knowledge. The affidavit indicates that he and the unwitting informant went to the residence with the intent to buy cocaine. While the cocaine buy was effectuated "through" the unwitting informant, the affidavit indicates that the informant was involved in the criminal transaction. We also believe that an independent and cautious magistrate could conclude from the affidavit that the informant had a reasonable basis to believe that the substance obtained by the unwitting informant was cocaine. The affiant states that the informant, who was described as being "familiar with the characteristics of

cocaine,”<sup>1</sup> had “advised” the affiant “that a purchase of cocaine” was made at the residence. The affidavit doesn’t state that the informant was *told* that the substance was cocaine, or that he *suspected* that the unwitting informant had purchased cocaine. Rather, it plainly indicates that the informant affirmatively stated that cocaine had been bought at the residence. Accordingly, we conclude that the trial court did not err in refusing to suppress the evidence obtained pursuant to the search warrant. *Echavarria, supra* at 367-368.

Affirmed.

/s/ Harold Hood

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald

<sup>1</sup> While the affiant’s assertion that the informant possessed this characteristic is conclusory, we note that the reliability of this observation is supported by facts presented later on in the affidavit. Specifically, the affiant noted that information provided by the informant had previously served as the basis for “78 controlled purchases of cocaine. All of these controlled purchases tested positive for cocaine.” LaFave & Israel, *Criminal Procedure* (2<sup>nd</sup> ed), § 3.3(c), p 144.