

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DURYANE CHANEY,

Defendant-Appellee.

UNPUBLISHED

June 12, 2001

No. 229287

Wayne Circuit Court

LC No. 00-004230

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant was charged as a second habitual offender, MCL 769.10; MSA 28.1082, with possession of less than twenty-five grams of cocaine, 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), possession of less than twenty-five grams of heroin, 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and possession of less than twenty-five grams of marijuana, 333.7403(2)(d); MSA 14.15(7403)(2)(d). The trial court granted defendant's motion to suppress evidence seized pursuant to a search warrant, finding that the warrant was not supported by probable cause, and dismissed the case. The prosecution appeals by right. We reverse.

We review a trial court's ultimate decision to suppress seized evidence de novo, but we review its findings of fact for clear error. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996), quoting *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993).

Probable cause justifying a search must be established before a search warrant may be issued. *People v Sloan*, 450 Mich 160, 166-167; 538 NW2d 380 (1995); *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000). Probable cause exists when the facts and circumstances would allow a reasonably prudent person to believe that evidence of a crime or contraband may be found in the identified location. *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000); *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992). When this Court reviews the sufficiency of an affidavit to establish probable cause, the affidavit and warrant must be read in a realistic and common sense manner, giving deference to the magistrate's decision. *Russo, supra*; *People v Poole*, 218 Mich App 702, 705; 555 NW2d 485 (1996); *People v Stumpf*, 196 Mich App 218, 220; 492 NW2d 795 (1992). This Court will not,

however, accept a magistrate's decision if it is not supported by a substantial factual basis. *Poole, supra*; see, also, *Kazmierczak, supra* at 417.

In this case, the affidavit contained information from an unnamed informant and a police investigation. When information in an affidavit comes from an unnamed informant, the affidavit must contain sufficient facts from which a magistrate could find that the information was based on the informant's personal knowledge and that the informant was credible or the information was otherwise reliable. *Poole, supra* at 706. We conclude that the affidavit set forth sufficient facts on which the magistrate could have found that the informant had personal knowledge and that the informant's information was reliable.

Here, the affidavit offers more than just a bare assertion of personal knowledge. See *Stumpf, supra* at 223. In this case, the informant stated that "Chuckie," a drug trafficker, had two houses. The informant advised that Chuckie stored drugs at a specific house in Detroit and also that Chuckie resided in the area of Evergreen and Twelve Mile Road in Southfield. The informant told police that he had been inside Chuckie's drug-storage house on "numerous occasions" and had obtained heroin from him. The informant described the drug-storage house as "essentially. . . vacant" and said that Chuckie did not make any sales out of the house other than to people that he knew. The informant described Chuckie and Chuckie's "new blue Cadillac." Although the informant did not know defendant's name, the affidavit did contain sufficient details from which a magistrate could find that the informant had personal knowledge of defendant's alleged drug-related activities.

Further, police observations confirmed parts of the informant's story, thus, establishing that the informant's information was reliable. *People v Griffin*, 235 Mich App 27, 43; 597 NW2d 176 (1999) (the reliability of an informant's story can be established through corroborating facts alleged by the affiant after investigation). The affiant accurately described a 2000 Cadillac leased in defendant's name and driven by defendant to the drug-storage house. The informant's credibility also was established by the police officer affiant's statement that the informant had made statements against his penal interests. *People v Head*, 211 Mich App 205, 209; 535 NW2d 563 (1995).

In addition, police observations established that defendant, who one could reasonably conclude is Chuckie based on the informant's description, was spending time at the two locations specified by the informant. On two occasions over a five-day period, the police saw defendant allow someone into the alleged drug-storage house. Each visitor, one of which was a "known narcotics trafficker," left after twenty to twenty-five minutes. Based on the police officer affiant's extensive experience with drug offense investigations, he concluded that this activity was consistent with drug trafficking activity. *Darwich, supra* at 639 (an affiant's experience is relevant to establish probable cause). In addition, the police also discovered that defendant had a prior arrest record for drug-related offenses. Based on the above information, we conclude that the trial court erred in finding that no information existed to support the affiant's conclusion that defendant was Chuckie and that there was insufficient information to support the assertion that contraband would be found at the two houses. Therefore, giving deference to the magistrate's decision to issue a warrant in this case, we believe there was a substantial factual basis on which to conclude that the informant had personal knowledge of the activities he described and that the

informant's information was reliable. Accordingly, the trial court erred when it found that the warrant was not supported by probable cause and dismissed the case against defendant.

We reverse.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Brian K. Zahra