

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

CHRISTOPHER LAMAR HAWKINS,

Defendant-Appellee.

UNPUBLISHED

September 28, 2001

No. 230839

Kent Circuit Court

LC No. 99-122537-FH

Before: Holbrook, Jr., P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

The prosecution appeals by right from an order quashing a search warrant, suppressing the evidence seized pursuant to the search warrant, and dismissing several charges against defendant.¹ We affirm.

In November 1999, Grand Rapids police searched a residence and found cocaine, three guns, materials typically used in cocaine production, and mail and receipts listing defendant's name. The search occurred pursuant to a search warrant. A magistrate issued this search warrant based on an affidavit in which the affiant, a police officer, recited incriminating information given to him by one or two unnamed informants² but did not make affirmative allegations supporting the credibility of the informants or the reliability of the incriminating information.

In August 2000, defendant moved to quash the search warrant, suppress the discovered evidence, and dismiss the case, relying primarily on MCL 780.653, which states:

The magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit 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:

¹ Dismissal occurred because the disallowed evidence obtained under the search warrant apparently comprised the only evidence incriminating defendant. Indeed, a discussion to this effect took place at the suppression hearing, without objection by the prosecution.

² The affidavit is not clear regarding whether one or two confidential informants provided information to the affiant.

(a) If the person is named, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information.

(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.

The trial court granted defendant's motions, finding, *inter alia*, that the violation of MCL 780.653 invalidated the search warrant.

On appeal, the prosecution contends that the trial court's order must be reversed because a violation of MCL 790.653 does not warrant the suppression of the evidence. We disagree. We review issues of statutory construction de novo. See *Mager v Dep't of State Police*, 460 Mich 134, 143 n 14; 595 NW2d 142 (1999).

We find the case of *People v Sloan*, 450 Mich 160, 183-184; 538 NW2d 380 (1995), dispositive. The *Sloan* Court ruled that mere conclusions by a police officer affiant, in the absence of facts supporting the conclusions, could not support the issuance of a search warrant under MCL 780.653. See *Sloan*, *supra* at 166-172. The Court then considered the appropriate remedy for the violation of the statute that had occurred:

In [*People v*] *Sherbine*[, 421 Mich 502; 364 NW2d 658 (1984), superceded on other grounds by statute as stated in *People v Lucas*, 188 Mich App 554 (1991)], we held that evidence obtained specifically in violation of MCL 780.653 . . . must be excluded. The Legislature appears to have acquiesced in this particular construction of MCL 780.653 While the Legislature subsequently amended MCL 780.653 . . . because it disagreed with portions of our statutory analysis provided in *Sherbine*, it is significant that the Legislature when instituting such amendments did not alter our holding that evidence obtained in violation of the statute must be excluded. To change the law in that regard would have been an easy and convenient task for the Legislature. Neither the language in the amendments, nor the legislative history pertinent to the amendments provide a basis for concluding that a sanction other than exclusion is appropriate for the violation of MCL 780.653 Clearly, the Legislature shares our view that no remedy other than exclusion is as likely to assure the full enforcement of all the requirements under MCL 780.653 . . . – a statute specifically designed by the Legislature to implement the constitutional mandate for probable cause under Const 1963, art 1, § 11.

Because the blood test result procured pursuant to the instant search warrant constitutes evidence obtained in violation of MCL 780.653 . . . , we conclude that it must be excluded. [*Sloan*, *supra* at 183-184 (footnotes omitted).]

Sloan, therefore, makes clear that evidence obtained under search warrants issued in violation of MCL 780.653 must be suppressed. It is clear that the search warrant in the instant case was indeed issued in violation of MCL 780.653.³ Indeed, the prosecution does not argue to the contrary. Accordingly, the trial court did not err in quashing the search warrant, suppressing the discovered evidence, and dismissing the charges against defendant.

We note that the prosecution spends a considerable portion of its brief discussing the so-called “good-faith exception” to the requirement of a valid search warrant and arguing that suppression was not warranted in this case because in executing the warrant issued by the magistrate here, the police acted in good faith. The prosecution points to the case of *People v Hill*, 192 Mich App 54, 56; 480 NW2d 594 (1994), in which this Court declined the invitation to “recognize and apply a good-faith exception to the search warrant requirement because the police acted on a search warrant they believed was valid.” The prosecution contends that we should either distinguish *Hill* or follow it reluctantly under MCR 7.215(I)(1) and call for a conflict panel. We decline to take either of these actions. Indeed, as noted earlier, this case is squarely governed by the Supreme Court construction of the applicable statute in *Sloan, supra*. We are not at liberty to overrule or modify Supreme Court precedent, *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), and the resolution of this case on statutory grounds renders unnecessary a consideration of the prosecution’s constitution-based search and seizure issues. See *Sherbine, supra* at 506.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

³ We acknowledge that the portion of MCL 780.653 violated in the instant case is not the same portion of MCL 780.653 that was violated in *Sloan*. This fact, however, does not change the applicability of *Sloan* to the instant case. Indeed, *Sloan* makes clear that “evidence obtained specifically in violation of MCL 780.653 . . . must be excluded,” see *Sloan, supra* at 183, and does not limit this principle to violations of only certain portions of MCL 780.653.