STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED October 19, 2001
v	No. 230689 Wayne Circuit Court Criminal Division
THOMAS C. WHITE, Defendant-Appellee.	LC No. 00-008051

Before: Cooper, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

The prosecution appeals as of right from an order granting defendant's motion to suppress evidence seized from his home pursuant to a search warrant, which led to the dismissal of a charge of possession with intent to deliver 225 or more but less than 650 grams of cocaine, MCL 333.7401(2)(a)(*ii*). We reverse.

The prosecution contends that the trial court erred by suppressing evidence obtained during the execution of the search warrant. Defendant moved to suppress the evidence, contending that the affidavit submitted in connection with the warrant failed to indicate that the confidential informant spoke with personal knowledge about the lower flat of the two-flat home, where the contraband was found.[1] Because the information relied on to obtain the search warrant derived from an unnamed informant, MCL 780.653(b) guided the magistrate's decision. MCL 780.653(b) provides as follows:

> 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:
>
> * * *

[1] Defendant did not challenge the informant's credibility. Indeed, there was evidence that the informant had provided information on four occasions, each time leading to arrests and convictions.

> (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.

As noted above, the trial court granted defendant's motion to suppress the evidence. Following a dismissal of the charges, the prosecution appeals.

Generally, a search warrant may not issue unless probable cause exists to justify the search. *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000), citing US Const, Amend IV; Const 1963, art 1, § 11. "Probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct could be found in a stated place to be searched." *People v Stumpf*, 196 Mich App 218, 227; 492 NW2d 795 (1992). In assessing a magistrate's decision with regard to probable cause, the reviewing court must 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." *People v Poole*, 218 Mich App 702, 705; 555 NW2d 485 (1996). However, the search warrant and underlying affidavit must be evaluated in a commonsense and realistic manner, paying deference to the conclusion that probable cause existed. *Id.* "Rather than engage in hypertechnical after-the-fact scrutiny of affidavits, we give great deference to the magistrate's decision because of our preference for the use of search warrants." *Stumpf, supra* at 227.

In regard to the "spoke with personal knowledge" aspect of an affidavit, we further opined as follows:

> In general, the requirement that the informant have personal knowledge seeks to eliminate the use of rumors or reputations to form the basis for the circumstances requiring a search. The personal knowledge element should be derived from the information provided or material facts, not merely a recitation of the informant's having personal knowledge. If personal knowledge can be inferred from the stated facts, that is sufficient to find that the informant spoke with personal knowledge. [*Stumpf, supra* at 223 (citations omitted).]

The reviewing court's factual findings are reviewed for clear error, although the ultimate decision is reviewed de novo. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). Clear error exists if we are left with a definite and firm conviction that a mistake has been made. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998).

Here, the affidavit in support of the search warrant indicates that the informant was inside the upper flat of the two-flat home less than twenty-four hours before the warrant was sought. According to the affidavit, the informant stated that "he/she observed a large amount of cocaine inside the upper flat," that "bulk narcotics [were] being stored in the basement," that "narcotics proceeds [were] being stored in [the lower flat]," and that both flats were accessible to each other and the basement because they were family owned. We recognize that the informant did not specifically indicate that he or she actually observed the "bulk narcotics" in the basement or the "narcotics proceeds" in the lower flat. However, we believe that it can be reasonably inferred

from these facts that the informant learned this information while in the house.[2] Thus, we believe that the affidavit was sufficient to support a conclusion that the confidential informant spoke with personal knowledge of the information. Consequently, the trial court erred in granting defendant's motion to suppress the evidence seized pursuant to the search warrant.

Reversed and remanded for reinstatement of the original charge. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ David H. Sawyer
/s/ Donald S. Owens

[2] Moreover, the affidavit noted "[t]he informant stated that only selected persons are allowed on the premises . . . ." Accordingly, we find further support for a conclusion that the informant spoke with personal knowledge, rather than relying on rumor or reputation.