

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WADE DILLARD,

Defendant-Appellee.

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UNPUBLISHED  
November 6, 2001

No. 232738  
Wayne Circuit Court  
LC No. 00-009815

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

The prosecution appeals as of right the circuit court's order quashing a search warrant and dismissing this case against defendant. We reverse. We decide this appeal without oral argument pursuant to MCR 7.214(E).

The prosecution charged defendant with possession with intent to deliver 50 or more grams, but less than 225 grams, of cocaine under MCL 333.7401(2)(a)(iii). The charges arose from evidence seized pursuant to a search warrant executed at a Detroit residence. Defendant moved to quash the warrant and suppress the seized evidence, arguing that the search warrant was not sufficient to establish probable cause. The trial court concluded that the allegations in the warrant were unspecific and did not meet the constitutional standards to provide probable cause. It granted defendant's motion and dismissed the charges.

The prosecution argues that the warrant is sufficient to support probable cause and that the trial court erred in granting defendant's motion and dismissing the charges. We agree.

The pertinent portions of the search warrant provide as follows:

The Affiant is a sworn member of the Detroit Police Department assigned to the Narcotics Division to investigate violations of the Controlled Substance Act. Affiant has been a Police Officer for 10 years with 5 of these years assigned to the Narcotics Division. Affiant has received training by the Detroit Police Department as well as the Drug Enforcement Agency in undercover techniques and investigative skills. Affiant has purchased narcotics in its various forms on over 50 occasions resulting in the arrests and convictions of individuals for Delivery of a Controlled Substance.

Affiant is working with a credible and reliable SOI [source of information] affiant has utilized on numerous occasions to investigate cases and persons trafficking narcotics. The SOI has provided information in the past that has been proven to be true and accurate through investigation and verification by other Law Enforcement officials. The SOI has been utilized in the above manor [sic] on atleast [sic] (4) cases in where arrests have been made for various offenses, all felonies. Although the SOI may have not been responsible for the actual arrest, he/she provided corroborated information which was accurate in the details of the arrests and charges. The SOI in affiants [sic] experience has a [sic] extensive knowledge of cocaine and its forms of bulk, packaged, powder, and crack. Therefore, the SOI is credible and reliable.

Affiant has received information from the SOI that she/he has been at 18662 Lamont in the recent weeks and observed cocaine distributed from the premises. The SOI observed a [sic] unwitting purchase cocaine from the premises. The unwitting stated that the seller is a black male in his late thirties, and that the seller lives inside the premises. The SOI provided affiant with the address and a description of the house. The SOI stated that she/he has observed the unwitting go directly into 18662 Lamont then return with cocaine on more than (1) occasion.

Affiant has received information from the SOI that she/he had a conversation with the unwitting who stated he/she has purchased cocaine on Lamont from the same guy (seller) in the past 24 hours and that if the SOI wanted any cocaine the unwitting stated she/he would take the SOI to the house on Lamont.

Affiant has checked the above location and has observed a vehicle registered to Wade Dillard. Mr. Dillard according to the SOS records has numerous vehicles registered to him with \_\_\_\_ [illegible] of these vehicles registered in his name at 18662 Lamont. Mr. Dillard was born in 1966 which puts him in the approximate age of the seller.

A search warrant may be issued only when supported by probable cause. MCL 780.651(1). Search warrants and the affidavits underlying them are to be read in a common sense and realistic manner. *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992), citing *Illinois v Gates*, 462 US 213; 103 S Ct 2317; 76 L Ed 2d 527 (1983). In reviewing the magistrate's decision to issue a search warrant, this Court should "ask only whether a reasonably cautious person could have concluded that there was a 'substantial basis'" to support "the magistrate's conclusion that there is a 'fair probability that contraband or evidence of a crime will be found in a particular place.'" *Id.*, quoting *Gates*, *supra* at 238. "The magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit." MCL 780.653. Further, if the affidavit contains allegations based upon information supplied to the affiant by an unnamed person, the affidavit must contain "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." MCL 780.653(b).

The affiant stated that he has worked for five years in the narcotics division and has used the informant numerous times. This indicates that the affiant is familiar with the informant. On previous occasions, the informant gave information that was found to be true and accurate. This information satisfies the credibility and reliability element. See *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992); *People v Humphrey*, 150 Mich App 806, 812; 389 NW2d 494 (1986).

The informant also told the affiant that he personally observed the distribution of cocaine from the Lamont residence while present at the residence and referred to a specific individual who purchased cocaine from that residence. In addition, the informant related what the third person told him about the seller of the cocaine: that he was a black male in his late thirties and lived in the house. The third person also told the informant that in the twenty-four hours before the information was passed on to the affiant, the third person purchased cocaine from the same seller at the Lamont residence. As a result, the affidavit contained sufficient allegations to allow the magistrate to conclude that the informant spoke with personal knowledge of the information.

“[M]ultiple hearsay statements may be used to establish probable cause where the ordinary requirements of personal knowledge and reliability or credibility are met.” *People v Poole*, 218 Mich App 702, 706; 555 NW2d 485 (1996). Credibility as an informant may be established where the informant makes statements against his penal interest. *Id.* at 706-707. See *People v Head*, 211 Mich App 205, 209; 535 NW2d 563 (1995). The third person told the informant that he had purchased cocaine from the seller at the Lamont residence. This statement against interest weighs in favor of that person’s credibility. Coupled with the fact that the informant stated that he or she had personally observed the third person purchase cocaine from the residence on more than one occasion, the information supplied to the informant by the third person was properly found reliable by the magistrate.

Finally, the information contained in the warrant must be sufficient to support probable cause. MCL 780.651(1). The informant stated that he observed the distribution of cocaine from the Lamont residence in recent weeks. He learned from another person he had observed purchasing cocaine at the residence that the seller, a black male in his late thirties, lived at the residence. The informant told the affiant that, within the twenty-four hours before giving the affiant the information, the third person purchased cocaine from the Lamont residence and offered to take the informant there to make a purchase. With this information, and giving the affidavit a common sense and realistic reading, a reasonably cautious person would conclude that there was a substantial basis to support the magistrate’s finding that there was a fair probability that contraband or evidence of a crime would be found at the Lamont residence. The trial court erred in finding the warrant insufficient.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Janet T. Neff  
/s/ Joel P. Hoekstra