STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

FRED L. CULVER,

Defendant-Appellee.

UNPUBLISHED
December 11, 2001

No. 222657
Wayne Circuit Court
LC No. 99-004437

Before: White, P.J., and Sawyer and Saad, JJ.

WHITE, P.J. (*dissenting*).

I respectfully dissent.

The question is whether the use of the words "To be located and searched:" rather than "To be located and seized," renders the warrant insufficient, in violation of the Fourth Amendment, Article 1, § 11 of the Michigan Constitution, or MCL 780.654, so as to compel suppression of the evidence. I conclude that under the circumstances that the affidavit clearly seeks to support the issuance of a warrant authorizing the seizure of defendant and certain vehicles,[1] and is directed toward establishing that there is probable cause to believe that defendant is engaging in drug trafficking and that there is probable cause to believe that defendant and the cars will be found at the address to be searched, and the warrant itself specifically commands that, although the entire premises are subject to search, what is to be searched for and located are defendant and the vehicles,[2] the use of the word "search" rather than

[1] The last paragraph of the affidavit states:

> Wherefore, the Affiant has probable cause to believe that the above [sic] above-described seller and vehicles will be found at 316 Keelson and *seeks to remove same.* [Emphasis added.]

[2] The warrant states:

> TO THE SHERIFF OF ANY PEACE OFFICER OF SAID COUNTY, P.O. Lyle Dungy Affiant, having subscribed and sworn to an affidavit for a Search Warrant, and having under oath examined Affiant, am satisfied that probable cause exists.
>
> **Therefore: IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I command that you search the following described place:** The entire premises known as 316 Keelson, in the City of Detroit, County of Wayne,

(continued…)

"seize" is not fatal. I reach this conclusion without regard to any "good faith" exception to the exclusionary rule, as no such exception has been recognized in Michigan. I do not read the instant warrant as a general warrant. Rather, I understand the warrant to clearly direct the executing officers to locate and search defendant and his vehicles.

While the majority correctly observes that MCL 780.652 does not provide for the seizure of criminal suspects, *People v Johnson*, 431 Mich 683, 689; 431 NW2d 825 (1988), I find this case indistinguishable from *Johnson*, except in the use of the words "to be located and searched" rather than "to be searched for and seized" in the warrant. In *Johnson*, the Court held that notwithstanding that the statute did not authorize the use of a search warrant to authorize the seizure of a criminal suspect, the Fourth Amendment was not violated where police possessed probable cause to arrest the defendant, and the finding of the magistrate in issuing the warrant satisfied the requirements of *Payton v New York*, 445 US 573; 100 S Ct 1371; 63 L Ed 2d 639 (1980), and *People v Oliver*, 417 Mich 366; 378-379; 338 NW2d 167 (1983). Here, as set forth in the affidavit, the police had probable cause to arrest defendant based on their surveillance, and the magistrate found probable cause existed, and found probable cause to believe that defendant would be found at the location authorized to be searched.

In the instant case, as in *Johnson, supra*, the object or thing searched for was the defendant. While the majority states that "because the police modified an arrest warrant to create a search warrant, without specifying the items to be seized, it appears that police officers intended to enter the house in search for drugs," there is nothing in this record to support that conclusion. On this record, it appears that the officers entered the premises and located defendant in a bedroom. The narcotics were found on the bed, fairly within defendant's area of control and apparently in plain view. Recognizing that my conclusion is premised on the assumptions that at all times the police sought only the authority to search for and arrest

---

(…continued)

> State of Michigan. This address is described as a 2 story town house. The aforementioned dwelling is located in the Grayhaven subdivision.
>
> To be located and searched:
>
> Suspect #1 – Fred Lee Culver BM27. DOB: 042771. Address: 316 Keelson. Ht: 5'5. Wt: 160lbs. Complexion: Light. SS#: [ ]. DPD#: 478661. A.K.A. Christopher Antoine Williams, A.K.A. "Black."
>
> Vehicles:
>
> a) 1999 Cadillac Seville STS 4door/Black Vin#1G6KY5492XU901626 Plate# QFY803
>
> b) 1998 Land Rover 4 door/Gold Vin#SALPV1440WA402308 Plate# QCW773
>
> c) 1986 Cadillac Cimarron 4door/Crème Vin#1G6JG69W4GJ517545 Plate# RBD026 [Emphasis in original.]

defendant, and exercised only that authority when executing the warrant, I would agree that it would be appropriate to remand to permit defendant to demonstrate that the police objective, or the search actually conducted, was directed at the discovery and seizure of drugs, rather than defendant himself.

Lastly, the circuit court invalided the search on the additional ground that the warrant did not establish the requisite probable cause. Notwithstanding any problems with the information attributed to the informants, there was sufficient information set forth in the affidavit derived from officer surveillance to lead a reasonably cautious person to conclude that there was probable cause to believe that defendant delivered narcotics to his brother, and that defendant would be found at 316 Keelson.

In sum, the warrant specifically authorized the police to search the Keelson address for the purpose of locating and searching defendant and his vehicles. While the warrant was in several ways deficient, the deficiencies were not relevant given the manner in which the warrant was executed and the location of the narcotics. The affidavit established probable cause to arrest defendant and to look for him at the Keelson address; the warrant authorized the entry into the premises to locate defendant and search him. Given that, as set forth in the affidavit, there was probable cause to arrest defendant, and the magistrate found that probable cause existed, that the object seized was defendant himself, and was identified with particularity in the warrant, and that the narcotics were located in defendant's control and in plain view, I would not invalidate the warrant, the search for defendant and the seizure of the narcotics on the basis that the warrant itself did not state that defendant or the narcotics should be seized. I would reverse and reinstate the charges.

/s/ Helene N. White