

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

QUAN CAMPBELL,

Defendant-Appellee.

UNPUBLISHED

January 25, 2002

No. 236628

Wayne Circuit Court

LC No. 01-003297

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

The prosecution appeals as of right from the trial court's order dismissing the charges of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v), and possession of a firearm during the commission of a felony, MCL 750.227b, brought against defendant. Prior to trial, defendant brought a motion to suppress the evidence on the basis that there was insufficient evidence to establish probable cause to support issuance of the warrant. The trial court granted defendant's motion to suppress, resulting in dismissal of the charges against defendant. We reverse.

The prosecution's sole issue on appeal is that the trial court erred in determining that no substantial basis existed to support issuance of the search warrant. We agree.

We review a magistrate's decision to issue a search warrant to determine whether a reasonably cautious person could have concluded that there was a substantial basis for the finding of probable cause. *People v Whitfield*, 461 Mich 441, 444; 607 NW2d 61 (2000). Further, the underlying affidavit must be read in a common sense and realistic manner, and the trial court's findings of fact are reviewed for clear error. *Id.*

A magistrate may issue a search warrant only when it is supported by probable cause. MCL 780.651; *People v Osaghae*, 460 Mich 529, 534; 596 NW2d 911 (1999); *People v Ulman*, 244 Mich App 500, 509; 625 NW2d 429 (2001). Probable cause exists when a reasonable person, after viewing the facts and circumstances as a whole, would believe that evidence of a crime or contraband would be found in the location to be searched. *Ulman, supra* at 509. When probable cause is averred in an affidavit, a magistrate must find probable cause based on the personal knowledge of the facts by the affiant. *Id.*; MCL 780.653. If the affidavit bases its information on an unnamed informant, the unnamed informant must speak with personal knowledge of the information. *Id.* at 509-510; MCL 780.653(b). Further, the unnamed

informant must either be credible or the information must be reliable in order to support the issuance of a search warrant. *Id.*; MCL 780.653(b).

In the present case, both the affiant, Michael Williams, and the informant were credible and reliable. Williams was a sworn member of the Detroit Police Department Narcotics Division. Williams has been a police officer for over seven years, with over four of these years being assigned to the Narcotics Division. Williams also had participated in over one hundred narcotics raids. Further, the informant had been used by Williams and other members of the Narcotics Division on at least five occasions, resulting in the arrests of at least three persons.

Moreover, adequate probable cause existed to issue a search warrant. The informant went to defendant's house to buy marijuana. The informant stated that the main floor of the house had minimum furniture, was extremely cold, and a strong odor of marijuana was "emitting from the location." Defendant asked the informant whom he knew, or if he had come to the house with anyone on a prior occasion. The informant could not answer these questions, so defendant refused to sell marijuana to him.

Later that same day, Williams set up surveillance. Within thirty minutes, he saw three different individuals, on three separate occasions, arrive at the location. On each occasion, the person exited their motor vehicle, approached the location and knocked on the front window. Defendant then greeted the individual. Each individual appeared to hand something to defendant. Defendant, in exchange, would place his hands in his pocket and make a "handing gesture back to each of the individuals." The individuals would then leave the house.

In *Whitfield, supra*, a police officer attempted to buy drugs from a suspected drug dealer; however, the suspected drug dealer declined because the officer was unable to name a common acquaintance. *Whitfield, supra* at 447. The suspected drug dealer further added that if the officer returned with someone that the suspected drug dealer knew, the officer would be "taken care of." *Id.* The Michigan Supreme Court considered this factor in determining that probable cause existed and held, "[a]lthough the person would not complete the sale, he effectively promised to sell to the officer in the future, contingent on the officer returning with someone familiar to him." *Id.* at 448. Further, police observance of drug trafficking activity pursuant to their surveillance of locations is sufficient to support a search warrant. *People v Griffin*, 235 Mich App 27, 42-43; 597 NW2d 176 (1999).

Considering these facts in a common sense and realistic manner, the magistrate had a substantial basis for finding probable cause to issue the search warrant because there was a fair probability that contraband or evidence of a crime would be found at defendant's home. *Whitfield, supra* at 444. Although defendant would not complete the sale, he effectively implied that he would have sold to the informant had he produced the name of someone familiar to defendant. Therefore, the fact that defendant refused to sell the informant marijuana only because the informant could not produce a name of someone that defendant was familiar with, coupled with the fact that there was a strong odor of marijuana emitting from the location, suggests that the home did in fact contain narcotics. Further, the fact that a fixed surveillance on the home produced evidence that within a time span of thirty minutes, three different individuals went to the house and while standing at the door made some type of exchange with defendant, strengthens the fact that probable cause existed to issue a warrant.

A magistrate's determination of probable cause should be given great deference on review. *Illinois v Gates*, 462 US 213, 236-237; 103 S Ct 2317; 76 L Ed 2d 527 (1983); *Whitfield, supra* at 446. Accordingly, giving due deference to the decision of the magistrate, he did not err in issuing the search warrant.

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

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad