

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GEORGE WILLIAM NOLAN,

Defendant-Appellee.

UNPUBLISHED

April 13, 2004

No. 244509

Livingston Circuit Court

LC No. 01-012234-FH

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion to suppress evidence and dismissing the charge of possession with intent to deliver marijuana. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Police received a tip from a confidential informant that defendant was selling marijuana. Trash pulled from the curb of defendant's residence revealed the burned end of a cigarette that tested positive for marijuana and a utility bill addressed to defendant at that location. The magistrate authorized a search warrant, and a search revealed a large quantity of marijuana, a scale, packaging materials, guns, and currency. After initially denying defendant's motion to suppress, the circuit court reconsidered its order, granted the motion, and dismissed the charge.

This Court reviews a trial court's findings of fact regarding a motion to suppress evidence for clear error. *People v Sobczak-Obetts*, 463 Mich 687, 694; 625 NW2d 764 (2001). Questions of law relevant to a motion to suppress are reviewed de novo. *People v Hamilton*, 465 Mich 526, 529; 638 NW2d 92 (2002).

Probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct could be found in the place to be searched. *People v Stumpf*, 196 Mich App 218, 227; 492 NW2d 795 (1992). A reviewing court must give great deference to the magistrate's conclusion that probable cause existed. *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992). The affidavit must be read in a common sense and realistic manner to determine whether a reasonably cautious person could have concluded that the finding of probable cause had a substantial basis. *Id.*

MCL 780.653 provides that an affidavit in support of a search warrant may be based on information supplied by an unnamed person if the affidavit contains affirmative allegations from

which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person was credible or that the information is reliable.

In *People v Hawkins*, 468 Mich 488; 668 NW2d 602 (2003), our Supreme Court addressed the application of the exclusionary rule to evidence obtained through the use of an affidavit that did not comply with MCL 780.653. The Court concluded that the statute does not contemplate application of the exclusionary rule, and evidence seized pursuant to a search warrant issued in violation of the affidavit requirement of MCL 780.653 should not be suppressed. *Id.* at 491, 513.

Here, defendant relies on the violation of the statute to show the lack of probable cause. Absent the statutory violation, the evidence supplied by the confidential informant was properly before the magistrate. Where this evidence was corroborated by the trash pull, there was probable cause to issue the search warrant.

Reversed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski