STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 13, 2004
v	No. 245612 Wayne Circuit Court
HOWARD LEE DAVIDSON, Defendant-Appellant.	LC No. 02-006884

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

PER CURIAM.

Defendant was convicted, following a jury trial, of possession with intent to deliver more than 50 but less than 224 grams of a controlled substance – cocaine, MCL 333.7401(2)(a)(iii). He was sentenced to 10 to 20 years' imprisonment. Defendant appeals as of right, challenging the trial court's denial of his motion to suppress evidence and asserting multiple claims of prosecutorial misconduct arising out of closing argument. This case is submitted without oral argument pursuant to MCR 7.214(E). We affirm.

At trial, overwhelming evidence was presented by the prosecutor showing that a search of defendant's residence, executed pursuant to a search warrant, revealed digital scales with cocaine residue, sandwich baggies, baking soda, a blender, and 123.91 grams of cocaine, some of which was found in a cooler. These items were found in close proximity of each other, and there was police testimony that the items were indicative of drug dealing. Defendant was carrying $1,500 in cash on his person. The residence was owned by defendant and his wife. Defendant informed police that the cocaine belonged to him and that his wife had nothing to do with the drugs or any drug-dealing operation.

Before trial, defendant filed a motion to suppress the evidence, arguing that the search warrant was issued without a sufficient factual basis. The lower court record contains a cursory order denying the motion without mention of oral argument on the matter. The record does not contain a transcript of any hearing on the motion. Defendant's focus, however, is solely on the underlying affidavit that was relied on by the magistrate in issuing the warrant. The warrant authorized a search of defendant's residence and defendant himself. Defendant argues on appeal that the affidavit was insufficient to support issuance of the warrant for the reason that it lacked mention of any particular premises being connected or tied to defendant's drug activity. Therefore, according to defendant, the trial court erred in denying the motion to suppress the evidence. We reject defendant's argument.

A search warrant must be supported by probable cause to justify the search. US Const, Am IV; Const 1963, art 1, § 11; MCL 780.651; *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000). MCL 780.653 provides that "[t]he magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her."

In reviewing a decision on a motion to suppress evidence, the trial court's factual findings are reviewed for clear error, and the court's application of the constitutional standard regarding searches to the facts is reviewed de novo. *People v McGhee*, 255 Mich App 623, 626; 662 NW2d 777 (2003). However, appellate scrutiny of the underlying decision by the magistrate to issue a warrant does not involve de novo review. *People v Whitfield*, 461 Mich 441, 445; 607 NW2d 61 (2000), quoting *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). A magistrate's determination of probable cause is to be paid great deference by reviewing courts. *Whitfield, supra* at 446, quoting *Russo, supra* at 604. In *Russo, supra* at 604, our Supreme Court stated:

> In sum, a search warrant and the underlying affidavit are to be read in a common-sense and realistic manner. Affording deference to the magistrate's decision simply requires that reviewing courts ensure that there is a substantial basis for the magistrate's conclusion that there is a "fair probability that contraband or evidence of a crime will be found in a particular place." [Citation omitted.]

Here, the affiant was a seven-year police officer assigned to the Michigan State Police Downriver Area Narcotic Organization (DRANO), and his primary duties consisted of the initiation and investigation of narcotics-related incidents and complaints. The officer-affiant asserted that since June 2001 he had received numerous complaints that defendant was engaged in narcotics trafficking. Further, in January 2002, DRANO arrested an individual for delivery of cocaine, and this individual, who worked with defendant at TDS in Brownstown, named defendant as his cocaine supplier. The individual indicated that defendant supplied the entire TDS plant with cocaine.

Additionally, the officer-affiant maintained that in April 2002, DRANO was conducting surveillance on defendant's residence and viewed defendant leave the home and drive to a local grocery store, where defendant met with the driver of another vehicle. This individual was stopped about five minutes later for a traffic violation and arrested for possession of cocaine, and he admitted to police that he had just purchased the cocaine from defendant.

The affidavit also indicated that the officer had an unnamed subject purchase cocaine from defendant within the last forty-eight hours. Officer-affiant believed that narcotics were being sold and used at defendant's residence. Finally, the affidavit stated that, pursuant to a background check, defendant resided at the home for which the warrant was sought.

While we concede that the affidavit did not specifically refer to an instance where drugs were actually purchased from the home[1] or to someone having personal knowledge that drugs were located in the home, the affidavit provided sufficient information to conclude that there was a fair probability that contraband or evidence of a crime would be found in the home. The affidavit included information indicating that defendant was selling large quantities of cocaine, which would give rise to a reasonable inference that a place of operation existed somewhere at which location defendant was storing and preparing the cocaine for sale, i.e., weighing and packaging the narcotics. It is quite reasonable, realistic, and a matter of common sense to conclude that the location for such an operation would be defendant's place of residence, and the affidavit informed the magistrate that the place to be searched was determined to be defendant's residence. Further supporting this conclusion is the affidavit's reference to an incident where defendant was seen leaving his home and going directly to a location where he sold cocaine, thereby suggesting that the cocaine had come from defendant's home. Giving the required deference to the issuing magistrate, there was a substantial basis for the magistrate's conclusion that there was a fair probability that contraband or evidence of a crime would be found at defendant's home. Accordingly, the trial court did not err in denying the motion to suppress.

Defendant next argues that the prosecutor engaged in misconduct through three comments made during closing argument that suggested personal knowledge on the part of the prosecutor and which were not based on evidence on the record. Additionally, defendant claims that the prosecutor made an improper "civic duty" reference. There were no objections at trial regarding the challenged comments.

A claim of prosecutorial misconduct is generally reviewed de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). This Court examines the record in context to determine whether the defendant was denied a fair and impartial trial. *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003). Because defendant failed to preserve the issue, we review it only for plain error affecting his substantial rights. *Id.* at 431-432.

The first three prosecutorial comments, challenged as being predicated on personal knowledge, reflect the prosecutor's attempt to convince the jury that a person who not only has cocaine but nearby scales, a blender, baking soda, and baggies is intending to deliver cocaine for profit. Prosecutors may not state facts that are unsupported by the evidence; however, they may freely argue the evidence and all reasonable inferences arising from the evidence related to the theory of the case. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). Further, prosecutors are given wide latitude and need not confine their arguments to the blandest of all possible terms. *People v Kris Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001). Here, the prosecutor's comments that the items found in the home suggested that defendant was a drug dealer were supported by the testimony of police officers who were experienced narcotic officers, knowledgeable about the tools of the trade. The prosecutor was not speaking from personal knowledge but rather from the evidence presented at trial and the reasonable inferences arising therefrom, and the comments related to the prosecutor's theory of the case.

[1] The paragraph in the affidavit referring to a recent undercover purchase of cocaine did not specify where the purchase was made.

Defendant also challenges a comment made by the prosecutor that referenced the war on drugs, the fight that police officers are engaged in every day, the sacrifices these officers make, and the dangers they face. A prosecutor may not suggest that the jury convict a defendant as part of the jury's civic duty because such a suggestion introduces issues that are broader than a defendant's guilt or innocence. *People v Abraham*, 256 Mich App 265, 273; 662 NW2d 836 (2003). Civic duty arguments encourage jurors not to make reasoned judgments. *Id.* Here, the prosecutor was not suggesting that the jury convict defendant on the basis of the jury's civic duty but rather was responding, on rebuttal, to defendant's suggestion during his closing argument that the police officers were liars and not to be trusted. An otherwise improper remark does not rise to an error requiring reversal when the prosecutor is merely responding to an argument presented by defense counsel. *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996).

In conclusion, we find no plain error affecting defendant's substantial rights arising out of the prosecutor's closing argument.

Affirmed.

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