STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

   Plaintiff-Appellant,

v

WILLIAM STEVENSON,

   Defendant-Appellee.

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UNPUBLISHED
June 10, 2004

No. 246664
Wayne Circuit Court
LC No. 02-012401

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Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

   The prosecutor appeals as of right from a circuit court order granting defendant's motion to suppress the evidence and dismissing the case. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

   Defendant was charged with possession with intent to deliver 50 grams or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii), and carrying a concealed weapon, MCL 750.227, after the police executed a search warrant at his house. Defendant filed a motion to suppress, claiming that the magistrate erred in issuing the warrant because the supporting affidavit showed that the police had reason to suspect that he was selling cocaine but did not prove that the substance sold was in fact cocaine. The trial court agreed and dismissed the charges.

   The trial court's ruling on a motion to suppress is reviewed de novo on appeal. *People v Echavarria,* 233 Mich App 356, 366; 592 NW2d 737 (1999). In reviewing a motion to suppress evidence, this Court reviews the trial court's factual findings for clear error but reviews its ultimate decision de novo. *Id*. When reviewing a magistrate's conclusion that probable cause to search existed, this Court does not review the matter de novo or apply an abuse of discretion standard. *People v Russo,* 439 Mich 584, 603; 487 NW2d 698 (1992). Paying deference to the magistrate's determination that probable cause did exist, this Court considers only whether the actual facts and circumstances presented to the magistrate would permit a reasonably cautious person to conclude that there was a substantial basis for the finding of probable cause. *Id.* at 603-604.

   Issuance of a search warrant must be based upon probable cause. MCL 780.651(1). "Probable cause to issue a search warrant exists where there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place."

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People v Kazmierczak, 461 Mich 411, 418; 605 NW2d 667 (2000). "A magistrate can consider only the information in the affidavit made before him in determining whether probable cause exists to issue a search warrant." *People v Sundling,* 153 Mich App 277, 285-286; 395 NW2d 308 (1986). The search warrant and underlying affidavit are to be read in a commonsense and realistic manner. *Russo, supra* at 604.

The officer stated in the supporting affidavit that he was familiar with cocaine and its packaging. While conducting surveillance of defendant's house over a two-day period, he saw what appeared to be narcotics trafficking. Specifically, he saw defendant, who was in possession of tiny Ziploc bags containing a substance that looked like cocaine, sell one or more of the bags to numerous individuals who came for that purpose and then left. An officer's experience is relevant to the establishment of probable cause, *People v Ulman,* 244 Mich App 500, 509; 625 NW2d 429 (2001), and an officer's observation of drug trafficking activity during surveillance is sufficient to support a search warrant. *People v Mario Perry,* 463 Mich 927; 620 NW2d 308 (2000); *People v Griffin,* 235 Mich App 27, 42-43; 597 NW2d 176 (1999). Although there was no evidence to prove that the substance sold was in fact cocaine, "the affidavit need not *prove* anything." *People v Whitfield,* 461 Mich 441, 445; 607 NW2d 61 (2000) (emphasis in original). It only has to provide a substantial basis for concluding that there is a fair probability that contraband or evidence of a crime will be found in the place stated. *Id.* at 445-446. The affidavit met that requirement, and therefore the trial court erred in concluding otherwise.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens