

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MAMOUN FARRAJ,

Defendant-Appellee.

UNPUBLISHED

October 28, 2004

No. 248875

Wayne Circuit Court

LC No. 01-011802

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing the charges following the grant of defendant Mamoun Farraj's motion to suppress the evidence. We reverse and remand. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Farraj was charged with possession of anabolic steroids, second offense,¹ felon in possession of a firearm,² and possession of a firearm during the commission of a felony.³ The drugs and weapons were confiscated on March 14, 2001, during the execution of a search warrant at Farraj's home. Farraj filed a motion to suppress, claiming that the affidavit failed to establish probable cause for the issuance of a warrant. The trial court agreed and suppressed the evidence. The prosecutor was unable to go forward without the evidence and the charges were dismissed.

II. Suppression Of Evidence

A. Standard Of Review

In reviewing a motion to suppress evidence, we review the trial court's factual findings for clear error and its ultimate decision de novo.⁴ When reviewing a magistrate's conclusion that

¹ MCL 333.17766a(2).

² MCL 750.224f.

³ MCL 750.227b.

⁴ *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999).

probable cause to search existed, we do not review the matter de novo or apply an abuse of discretion standard.⁵ Rather, paying deference to the magistrate's determination that probable cause did exist, we consider 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.⁶

B. Probable Cause

Issuance of a search warrant must be based on probable cause.⁷ "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."⁸ "A magistrate can consider only the information in the affidavit made before him in determining whether probable cause exists to issue a search warrant."⁹ The search warrant and underlying affidavit are to be read in a commonsense and realistic manner.¹⁰

C. The Evidence

The information provided to the magistrate showed that Farraj had a prior conviction for possession of a large amount of steroids. Two years later, used syringes found in his trash contained the residue of anabolic steroids. Subsequently, more used syringes were found in his trash; they contained a similar residue to that which had previously tested positive for testosterone. A confidential informant reported seeing steroids used in the house and being offered steroids by Farraj. We conclude that such information was sufficient to permit a reasonable inference that Farraj continued to possess steroids and that they might be found in his house. Although the affidavit failed to include information showing that the confidential informant was credible or his information was reliable,¹¹ that alone does not warrant suppression.¹² Moreover, in *People v Goldston*,¹³ the Court recognized a good-faith exception to the exclusionary rule, holding that when the police rely in good faith on a judicially authorized

⁵ *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992).

⁶ *People v Sloan*, 450 Mich 160, 168-169; 538 NW2d 380 (1995), overruled in part on other grounds by *People v Hawkins*, 468 Mich 488, 502, 511; 668 NW2d 602 (2003), and by *People v Wager*, 460 Mich 118, 123-124; 594 NW2d 487 (1999).

⁷ MCL 780.651(1).

⁸ *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000).

⁹ *People v Sundling*, 153 Mich App 277, 285-286; 395 NW2d 308 (1986).

¹⁰ *Russo*, *supra* at 604.

¹¹ MCL 780.653(b).

¹² *Hawkins*, *supra* at 510-512.

¹³ *People v Goldston*, 470 Mich 523; 682 NW2d 479 (2004).

warrant and such reliance is objectively reasonable, suppression is not required despite a subsequent finding that the warrant was not based on probable cause.¹⁴

Reversed and remanded for reinstatement of the charges against Farraj. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra

¹⁴ *Id.* at 538, 541.