

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SELET DERADO STANLEY,

Defendant-Appellee.

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UNPUBLISHED

September 11, 2007

No. 272836

Wayne Circuit Court

LC No. 06-005433-01

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing this case following the grant of defendant's motion to suppress. 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 less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The evidence was found during the execution of a search warrant at an apartment on Senator Street in Detroit. The apartment was one of four in a two-story building. The warrant identified the upper left apartment as "7359 Senator upper apartment" and accurately described the building. As it turned out, each apartment had a separate street address and the upper left unit was actually 7363 Senator. Defendant challenged the validity of the warrant because it contained an incorrect address. The trial court agreed that the warrant was invalid and suppressed the evidence.

This Court reviews a trial court's factual findings at a suppression hearing for clear error but reviews the ultimate ruling on a motion to suppress de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997). The application of the exclusionary rule is a question of law that is reviewed de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001).

A search warrant must "designate and describe the house or building or other location or place to be searched . . . ." MCL 780.654(1).

The test for determining whether the description in the warrant is sufficient to satisfy the particularity requirement is whether “the description is such that the officers with a search warrant can with reasonable effort ascertain and identify the place intended.” The fourth amendment safeguard is designed to require a description that particularly points to a definitely ascertainable place so as to exclude all others. Thus, the test for determining the sufficiency of the description of the place to be searched is (1) whether the place to be searched is described with sufficient particularity as to enable the executing officer to locate and identify the premises with reasonable effort, and (2) whether there is any reasonable probability that another premises might be mistakenly searched. The requirement is designed to avoid the risk of the wrong property being searched or seized. [*People v Hampton*, 237 Mich App 143, 150-151; 603 NW2d 270 (1999) (citations omitted).]

Both the description in the affidavit of the property to be searched and the relevant information known to the officers executing the warrant can be relied upon to validate the warrant. *Id.* at 154.

In this case, the warrant identified the right building in which the apartment to be searched was located and accurately described the structure. The building itself contained four apartments and was marked with two street numbers, 7359 and 7365. Two mailboxes were hung on the left side of the entryway, the side marked 7359, and two mailboxes were hung on the right side of the entryway, the side marked 7365. Although two of the four individual mailboxes bore address numbers that did not appear on the building, the labels were too small to be read from the street, and the affiant, Officer Phillip Rodriguez, testified that he did not go up or into the building before obtaining the warrant to avoid revealing his interest in it. Rodriguez further testified that the upper left apartment was the target of the investigation. The inhabitant was known only as Rod, so there was no way to verify the address via the occupant’s name. In light of the numbers above the door, Rodriguez believed that the two apartments on the left corresponded to the 7359 address. He thus identified the upper left apartment as the upper unit of 7359 Senator. Rodriguez, who knew which apartment was to be searched, participated in the execution of the warrant, making it unlikely that the wrong apartment would be searched, and the officers did in fact enter the targeted apartment. Taking the warrant description together with Rodriguez’s knowledge regarding the premises, the location was described sufficiently to enable the officers to locate the premises to be searched and thus the mistake with regard to the actual address did not render the search warrant invalid. *People v Westra*, 445 Mich 284, 286; 517 NW2d 734 (1994); *Hampton*, *supra*. Therefore, the trial court erred in suppressing the evidence.

Reversed and remanded for reinstatement of the charges. Jurisdiction is not retained.

/s/ Mark J. Cavanagh  
/s/ Pat M. Donofrio  
/s/ Deborah A. Servitto