

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES ELLISON POOLE,

Defendant-Appellee.

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UNPUBLISHED

January 10, 2008

No. 274746

Wayne Circuit Court

LC No. 06-007832-01

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing this case after granting defendant's motion to suppress evidence. 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 heroin, MCL 333.7401(2)(a)(iv), and keeping an animal for fighting, MCL 750.49(2). The evidence was discovered following the execution of a search warrant at two homes affiliated with defendant. The trial court believed that the information contained in the search warrant affidavit was sufficient to establish probable cause, but was compelled to rule otherwise pursuant to this Court's decision in *People v Keller*, 270 Mich App 446; 716 NW2d 311 (2006).<sup>1</sup>

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 whether the 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. *People v Martin*, 271 Mich App 280, 297, 298; 721 NW2d 815 (2006).

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<sup>1</sup> After the trial court decided this case, our Supreme Court reversed this Court's decision in *Keller*. See *People v Keller*, 479 Mich 467, 477; 739 NW2d 505 (2007).

Issuance of a search warrant must be based on probable cause. *Id.* at 298. “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.” *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000). The affidavit may be based on information supplied to the affiant by another person. If the other person is not named, the affidavit must contain affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information provided and that the person is credible or his information is reliable. MCL 780.653(b). The search warrant and underlying affidavit are to be read in a commonsense and realistic manner. *Russo, supra* at 604.

In this case, the police conducted an investigation prompted by information from a confidential informant (CI) that defendant was selling large amounts of cocaine and heroin from two addresses. First, they determined from records that the York Street address supplied by the CI was defendant’s address. They also found defendant’s vehicles present at the Wellesley and York Street addresses. They conducted two trash pulls from each house. The trash contained papers linking the houses to defendant, trace amounts of narcotics, and other narcotics paraphernalia. Such evidence established probable cause to believe that evidence of narcotics would be found in defendant’s houses. *People v Michael Keller*, 479 Mich 467, 477; 739 NW2d 505 (2007). Therefore, the magistrate’s finding of probable cause was correct and the trial court erred in ruling otherwise.

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

//s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski