

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JIMMIE DELL SHINE,

Defendant-Appellee.

UNPUBLISHED

January 31, 2008

No. 274493

Wayne Circuit Court

LC No. 06-010360-01

Before: Beckering, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

In this prosecutor's appeal, the people appeal from the trial court's order quashing a search warrant, suppressing evidence, and dismissing the criminal charges against defendant.¹ We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Following the execution of a search warrant and the seizure of evidence from defendant's home, he was charged with possession of less than 50 grams of heroin with intent to deliver, MCL 333.7401(2)(a)(iii), felon in possession of a firearm, MCL 750.224f, possession of less than 25 grams of heroin, MCL 333.7401(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. The warrant was issued after an unsuccessful attempt at a controlled buy of narcotics from defendant at his home. The affidavit in support of the warrant indicated, among other things, that: (1) the police department had received numerous complaints of narcotics being sold from defendant's home; (2) a police officer, working through an unnamed but reliable informant, attempted to purchase drugs from defendant; (3) defendant declined the informant's request to buy a small amount of heroin, saying "I don't know you; I have never sold any thing to you. Come back with somebody I know"; and (4) the police officer subsequently observed three people arrive and leave the home on separate occasions over a thirty-minute period, which the officer believed, pursuant to his training and experience, was consistent with drug trafficking.

¹ The prosecutor claimed an appeal by right. But because the claim was filed more than twenty-one days after the order appealed from, it was not timely under MCR 7.204(A)(1)(a). Nevertheless, in the interests of justice and judicial economy, we will treat the case as an application for delayed leave to appeal, and will decide it as on leave granted.

At the suppression hearing, the trial court noted that the affidavit did not indicate what the police were looking for, or what was being packaged or sold, and that surveillance found only that three people came to the house in the course of a half hour. The court concluded that the affidavit was deficient and that the warrant should not have been signed, and therefore that the evidence seized as the result should be suppressed. The court further concluded that the good-faith exception to the exclusionary rule did not apply. The court subsequently dismissed the charges against defendant.

A trial court's findings of fact on a motion to suppress evidence are reviewed on appeal for clear error, but conclusions of law are reviewed de novo. *People v Sobczak-Obetts*, 463 Mich 687, 694; 625 NW2d 764 (2001). "A magistrate's 'determination of probable cause should be paid great deference by reviewing courts.'" *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992), quoting *Illinois v Gates*, 462 US 213; 103 S Ct 2317; 76 L Ed 2d 527 (1983). More particularly, appellate review of a magistrate's determination whether probable cause exists to support a search warrant "involves neither de novo review nor application of an abuse of discretion standard. Rather, the preference for warrants . . . requires the reviewing court to ask only whether a reasonably cautious person could have concluded that there was a 'substantial basis' for the finding of probable cause." *Russo, supra* at 603.

A search warrant shall not issue unless probable cause exists to justify the search. US Const, Am IV; Const 1963, art 1, § 11; MCL 780.651; *People v Gillam*, 479 Mich 253, 260; 734 NW2d 585 (2007). "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 information provided in the affidavit in this case is simply not sufficient to justify issuance of a warrant to search a home. The few statements attributed to defendant in rejecting the attempt at a controlled buy and the observation of three different individuals going briefly to defendant's door in a thirty-minute period do not, without more, add up to a reasonable probability that illegal drugs would be found at the location in question. The affidavit makes no further mention of suspicious behavior, such as money being exchanged, and gives no indication of what types of controlled substances might be involved. The trial court thus correctly found that a reasonably cautious person could not have concluded that there was a substantial basis for finding probable cause.

Ordinarily, evidence seized under a warrant issued without probable cause is inadmissible at a criminal trial. *People v Hellstrom*, 264 Mich App 187, 193; 690 NW2d 293 (2004). The exclusionary rule is not constitutionally based but rather is a judicially created rule. *People v Goldston*, 470 Mich 523, 528-29; 682 NW2d 479 (2004), citing *United States v Leon*, 468 US 897, 906; 104 S Ct 3405; 82 L Ed 2d 677 (1984). The purpose of the exclusionary rule is to deter police misconduct, not to rectify the errors of magistrates. *Goldston, supra* at 529-531. The exclusionary rule is subject to various exceptions, including the good-faith exception, which our Supreme Court formally adopted in *Goldston, supra* at 532. In doing so, the *Goldston* Court made the following comments in approval of *Leon*:

The [United States Supreme] Court concluded that the exclusionary rule should be employed on a case-by-case basis and only where exclusion would further the purpose of deterring police misconduct. The Court emphasized,

however, that a police officer's reliance on a magistrate's probable cause determination and on the technical sufficiency of a warrant must be objectively reasonable. Evidence should also be suppressed if the issuing magistrate or judge is misled by information in the affidavit that the affiant either knew was false or would have known was false except for his reckless disregard of the truth. Further, the Court stated that the good-faith exception does not apply where the magistrate wholly abandons his judicial role or where an officer relies on a warrant based on an affidavit " 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " [470 Mich at 531, quoting *Leon*, *supra* at 923, quoting *Brown v Illinois*, 422 US 590, 610; 95 S Ct 2254; 45 L Ed 2d 416 (1975) (Powell, J., concurring in part).]

In the instant case, there is no suggestion that the magistrate was misled, or abandoned his or her judicial role. However, as *Goldston* reiterated, law enforcement officers share in the responsibility to respect probable cause requirements, such that one executing a warrant that cannot reasonably, objectively, be understood to be predicated on probable cause is not acting in good faith. In this case, however, the reliance by the police on the signed warrant was objectively reasonable. The affidavit spoke to some, if not enough, activity at the address that comported with drug dealing, and of receiving information from a knowledgeable informant. Although those indications did not add up to probable cause as constitutionally required, that deficiency was not so obvious as to render the officers' belief in its existence, and thus the validity of the warrant, "entirely unreasonable."

The trial court order suppressing the evidence and dismissing the charges against defendant is reversed and the matter is remanded for further proceedings on the charges. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ David H. Sawyer
/s/ Karen M. Fort Hood