

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RODERIC HARRIS,

Defendant-Appellee.

UNPUBLISHED

June 3, 2008

No. 276730

Wayne Circuit Court

LC No. 07-004302-01

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

The prosecutor appeals as of right from an order quashing a search warrant and a separate order dismissing this case without prejudice. We reverse and remand for further proceedings. This case is being decided without oral argument pursuant to MCR 7.214(E).

This appeal arises from an order issued on February 15, 2007, quashing a search warrant and a separate order dismissing this case without prejudice. The prosecutor appeals as of right, challenging the ruling on the search warrant.

In an affidavit in support of the search warrant, Sergeant Harris averred in pertinent part that he had over five years’ experience as a narcotics officer, was knowledgeable about the sale, delivery, and packaging of narcotics, and could identify distribution methods of cocaine “by sight.” He further averred that over a two-month period, he had received numerous anonymous complaints and information about narcotics sales at 4515 Fischer in Detroit. He also stated:

On November 1, 2006, affiant conducted surveillance of 4515 Fischer¹ and observed the seller exit the front door and stand on the front porch. A short while later, writer observed a B/M suspected buyer approach the seller and engage in a brief conversation, the buyer then handed the seller a sum of money in exchange

¹ Sergeant Harris’ November 1, 2006, daily report does not reflect that he did surveillance at this address on this date. However, this was not challenged, and there is nothing in the record to clarify whether the surveillance was omitted by error, whether the surveillance took place on another date, or whether there was some other explanation. In any event, there is no challenge to the warrant on this basis.

for a small item of suspected narcotics. The buyer then left the area as the seller returned inside of the above location. Within ten minutes affiant observed a B/F suspected buyer go to the front door of this location and engage in a brief conversation with the suspected seller at which time the buyer handed the seller suspected money in exchange for a small item of suspected narcotics. Affiant spoke with the buyer after leaving the location. The buyer indicated that she purchased cocaine from the seller.

The warrant was executed at 4517 Fischer. The trial court suppressed the search warrant based on Sergeant Harris' affidavit, concluding that it was not sufficient. The court stated that there was not enough information to establish the reliability of the person who admitted just having purchased cocaine and who was observed leaving the residence after what appeared to be a drug purchase. The court opined that the person's admission that she had just purchased cocaine was not adequate. It noted that she might not have realized the statement, which was made to an undercover officer, was against her interests, as she may have just been telling him where he could get cocaine. The court concluded that in relying on an informant not known to him, Sergeant Harris operated on "blind faith", not "good faith". Accordingly, the court held that the good faith exception to the exclusionary rule did not apply.

In *People v Osantowski*, 274 Mich App 593, 615; 736 NW2d 289 (2007), lv pending on other grounds, this Court stated:

On appeal from a trial court's ruling on a motion to suppress seized evidence, the trial court's findings of fact are reviewed for clear error, while its ultimate decision is reviewed de novo. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). Appellate scrutiny of a magistrate's decision on the sufficiency of an affidavit underlying a search warrant "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." *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992).

A search warrant may only be issued upon a showing of probable cause. MCL 780.651(1). Probable cause to issue a search warrant exists if there is a substantial basis for inferring a fair probability that evidence of a crime is in the stated place. *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000). The affidavit is to be read in a commonsense and realistic manner. *Russo, supra* at 604. . . . When police officers act in "objective" good faith in executing a search warrant, the items seized should not be suppressed even if the warrant is later declared invalid. *People v Goldston*, 470 Mich 523, 526; 682 NW2d 479 (2004).

The requirements for search warrants are set forth in MCL 780.653, which provides:

The magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:

(a) If the person is named, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information.

(b) If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

Here, the magistrate's finding of probable cause was not based only on the information from the unnamed person mentioned in the affidavit, or from anonymous reports of drug activity at the residence. Sergeant Harris also stated that he had experience that enabled him to recognize a drug transaction, and that he had observed what appeared to be two drug transactions within approximately ten minutes of each other. The magistrate relied on these observations, together with information provided by the unknown buyer. The magistrate did not rely solely on the information from the unknown buyer. Moreover, it is irrelevant whether the unknown buyer knew that Sergeant Harris was a police officer, and coextensively irrelevant whether she recognized that her statement was against her interests. When the affidavit is read in a commonsense and realistic manner, *Russo*, 439 Mich at 604, the information can be viewed as reliable because she was observed buying what appeared to be drugs just before she identified the drug she purchased. It was not a situation where an unknown declarant provided otherwise unsubstantiated information that drug activity was afoot. Rather, the probable cause determination was based on the officer's observations, on the officer's conclusions that in turn were based on assessments informed by his extensive experience, and on the buyer's identification of the substance purchased immediately after the purchase. The buyer's statement was reliable because it was consistent with what the officer observed. The statement's reliability might also have been established if she knew it was a statement against her interests, but in this case her understanding of the import of her statement was not critical to an assessment of its truth. Thus, based on the information in the affidavit, "a reasonably cautious person could have concluded that there was a 'substantial basis' for the finding of probable cause." *Id.* at 603.

Defendant argues that the motion to suppress should nonetheless have been granted since the search warrant was executed at the residence apparently next door to the residence referenced in the affidavit. The sergeant's report for November 2, 2006, indicates that this search warrant was executed at 4517 Fischer instead of at 4515 Fischer. The record does not indicate whether the warrant should have said 4517 Fischer or whether the sergeant's report should have said 4515 Fischer. However, there is an untitled Detroit Police Department document listing 4517 as defendant's address. In his motion to suppress, defendant challenged the search on grounds that it was not authorized by the warrant since the warrant listed a different address. The prosecutor responded that defendant did not have standing to challenge the warrant since he had no privacy interest in the residence described in the warrant. However, defendant argued that the warrant did not authorize the search. It was the search, not the warrant, that defendant challenged below and challenges on appeal.

The goal of the exclusionary rule is to deter police misconduct. *Goldston*, 470 Mich at 538. In Michigan, the rule is subject to a good faith exception. *Id.* at 541. The *Goldston* Court stated:

Applying the good-faith exception to the exclusionary rule in this case, we conclude that the circuit court erred by suppressing the marijuana, firearm, and firefighter paraphernalia [found while searching the defendant's residence]. The police officers' reliance on the district judge's determination of probable cause and on the technical sufficiency of the search warrant was objectively reasonable. The information in the affidavit was not false or misleading, and the issuing judge did not "wholly abandon[]" her judicial role. . . . A review of the affidavit and search warrant can lead to no other logical conclusion than that the address listed was that of defendant. Indeed, it probably did not even occur to the magistrate or executing officers that the address was not defendant's address. [470 Mich at 542-543 (Citations and footnote omitted; emphasis added)].

The dissent in *Goldston* clarifies that the address was in fact correctly stated in the affidavit, but there was no other information in the affidavit to connect the defendant with this address. Thus, *Goldston* was not addressing an incorrect address situation. Here, the warrant was issued for a location not covered by the affidavit. While no authority in Michigan addresses executing a warrant at a location identified by the wrong address, defendant cites *United States v Collins*, 830 F 2d 145 (CA 9, 1987), for the proposition that the correct address is necessary as it defines the scope of the only search authorized. However, the *Collins* Court stated:

The Fourth Amendment requires that the place to be searched be described with particularity. The police were remarkably unparticular. They got the street address wrong twice. They got the sides of the street wrong once. They did not have a physical description that brought them to the right place. Cf. *United States v Turner*, 770 F2d 1508 (9th Cir), cert denied, 475 US 1026, 106 S Ct 1224, 89 L Ed 2d 334 (1985). There was not only a reasonable probability that another premise might mistakenly be searched, but another premise was searched. They had an address that they followed to the wrong house. The wrong address they had was due to their own carelessness and lack of common prudence; they had not carried out their duty to get the right particulars; they did not disclose what they had "a duty to discover and disclose." See *Maryland v Garrison*, 480 US 79, 107 S Ct 1013, 1018, 94 L Ed 2d 72 (1987). The information they gave Judge Wong misled her.

In this case, the warrant had more particularity. The record reveals that the warrant described the house to be searched as a two-story green frame duplex with white trim, with a black grate on the front door and a flowerpot hanging on the front porch. It specified the side of the street, the bordering streets, and the door to the duplex that was to be breached. In *People v Hampton*, 237 Mich App 143, 150-151; 603 NW2d 270 (1999), this Court held:

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. (citations omitted).

There is nothing to indicate that the warrant was not intended for defendant's actual address. Similarly, there is nothing to show that the house searched was not the house intended to be covered by the warrant. In this regard, it is noteworthy that Sergeant Harris, who observed the narcotics sale, was also involved in the search, and would therefore likely have directed the search of the intended premises. It appears that the only error was a typographical error and that the other information in the warrant would have made it clear that the house searched was the intended house. Accordingly, there was sufficient particularity to point to a definitely ascertainable place and that there was no police misconduct warranting exclusion.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher