STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERICK LAMONT LOUIS,

Defendant-Appellant.

UNPUBLISHED
June 17, 2008

No. 275652
Jackson Circuit Court
LC No. 06-003341-FH

Before: Gleicher, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession with intent to deliver Vicodin, MCL 333.7402(2)(b), and maintaining a drug house, MCL 333.7405(1)(d). He was sentenced as an habitual offender, third offense, MCL 769.11, to concurrent prison terms of 34 to 96 months for the marijuana conviction, 34 to 120 months for the Vicodin conviction, and 32 to 48 months for the maintaining a drug house conviction. He appeals as of right. Because the search warrant was obtained on evidence known to the police officers before they entered defendant's apartment without a warrant, and because the underlying affidavit established that the named informant spoke with personal knowledge, the trial court did not err in denying defendant's motions to suppress. Consequently, we affirm defendant's conviction for possession with intent to deliver marijuana. In addition, because it was supported by sufficient evidence, we affirm defendant's conviction for possession with intent to deliver Vicodin. However, we vacate defendant's conviction for maintaining a drug house because the evidence only established that defendant used the apartment to keep or maintain drugs on one occasion.

I. Basic Facts

In the early morning hours of March 2, 2006, the Jackson police and paramedics responded to a report of a possible heroin overdose at 105 West Mason Street in Jackson. Jacqueline Glaspie was found unconscious at the home of Carlton Heard. A paramedic informed Officer Gary Grant that the incident represented the third heroin overdose that had been reported that day. The police investigation turned to locating the origin of the potentially toxic heroin. After speaking with Heard and Monique Carson, the police went to 225 West Mason, apartment three, where defendant resided. The police attempted a "knock and talk," and an occupant indicated that they were not going to open the door. The police forced entry, secured defendant

and another man, and Grant left to obtain a search warrant. After Grant returned with the warrant, the police searched the one-bedroom apartment.

In the bedroom, the police found a tin container on a dresser shelf containing 13 individually packaged bags of marijuana, a clear plastic sandwich baggie containing 46 Vicodin pills, and small plastic baggies. Grant testified that during the search defendant volunteered that he did not sell heroin. In response, Grant asked, "What do you sell?" Defendant, who was handcuffed, made a head and hand gesture toward his bedroom and said, "that stuff in there." Defendant subsequently recanted his statement and claimed that he purchased marijuana by the ounce for personal use. The police also found more than $1,400 in defendant's apartment. Defendant had $354 on his person, and the additional money was hidden in different boxes in various locations in the bedroom.

At trial, the defense asserted that the marijuana was for personal use, that the Vicodin belonged to defendant's girlfriend, and that defendant was not maintaining a drug house.

II. Motions to Suppress

Defendant argues that the trial court erred by denying his two motions to suppress the evidence seized pursuant to the search warrant. We disagree. This Court reviews a trial court's factual findings regarding a motion to suppress for clear error. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). The trial court's ultimate decision regarding a motion to suppress is reviewed de novo. *Id.*

A. Search Warrant

We reject defendant's claim that the search warrant was invalid because the underlying affidavit did not establish the credibility of the informant or the reliability of the information. A search warrant may not issue unless probable cause exists to justify the search.[1] US Const, Am IV; Const 1963, art 1, § 11; MCL 780.651(1). In assessing a magistrate's decision with regard to probable cause, a reviewing court must evaluate the search warrant and the underlying affidavit in a commonsense and realistic manner, giving deference to the conclusion that probable cause existed, and determine whether a reasonably cautious person could have concluded, under the totality of the circumstances, that there was a substantial basis for a finding of probable cause. *People v Russo*, 439 Mich 584, 603-604; 487 NW2d 698 (1992).

The underlying affidavit may be based on information supplied by an informant. MCL 780.653. If the informant is named in the affidavit, all that is required by the statute is that the informant spoke with personal knowledge. MCL 780.653(a). If the informant is unnamed, in addition to showing that the informant spoke with personal knowledge, it must be shown that the unnamed person is credible or that the information is reliable. MCL 780.653(b).

[1] "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).

In the affidavit, Grant, the affiant police officer, stated the following:

> 13) Your Affiant was at 225 W Mason, when *Monique Carson* informed me that she did not want to be involved with this complaint, but *she had just left 225 W Mason St apartment 3,* and had asked the subjects inside if they had heard about the female down the street, who had almost died, and "E" responded "That was my shit."
>
> 14) *Carson* informed Your Affiant that while *she was inside of 225 W Mason St Apartment 3, that she did observe Heroin, Crack Cocaine, and Marijuana, sitting on the kitchen table*.
>
> 15) Monique Carson only knows the subject at 225 W Mason Apartment 3 as "E", she further described "E" as a tall, skinny black male, who is on parole. [Emphasis added.]

Because Grant specifically named Carson as the informant, it was only necessary to show that Carson spoke with personal knowledge.[2] A finding of personal knowledge should be derived from the information provided and not merely from a recitation that the informant had personal knowledge. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). "If personal knowledge can be inferred from the stated facts, that is sufficient to find that the informant spoke with personal knowledge." *Id*.

Carson provided a description of defendant, the specific types of drugs she observed, and the exact location of the drugs. In addition, the information was recent because Carson had just left defendant's apartment. Viewing the affidavit in a commonsense and realistic manner, there was a substantial basis for a reasonably cautious person to conclude that Carson spoke with personal knowledge.

B. Illegal Entry

We also reject defendant's claim that the validity of the search and seizure conducted under the authority of the search warrant was tainted by the initial entry into his apartment, which defendant maintains was illegal. However, "an illegal entry by police officers upon private premises [does] not require suppression of evidence subsequently discovered at those premises pursuant to a search warrant that [was] obtained on the basis of information wholly unconnected with the initial entry." *People v Smith*, 191 Mich App 644, 648; 478 NW2d 741 (1991). Under this "independent source" doctrine, "if nothing seen by the officers upon their initial entry either prompted the officers to seek a warrant or was presented to the magistrate *and*

[2] Defendant's reliance on *People v Sherbine*, 421 Mich 502; 364 NW2d 658 (1984), for the proposition that MCL 780.653 requires a finding of the informant's credibility is misplaced. *Sherbine* was decided under a previous version of the statute. See *People v Collins*, 438 Mich 8, 13 n 7; 475 NW2d 684 (1991). Plaintiff correctly notes that the current version of the statute imposes no such requirement where the informant is named in the affidavit.

affected the decision to issue the warrant, the evidence need not be suppressed." *Id.* at 650 (emphasis in original).

Testimony from Grant and Officer Williams Mills at the preliminary examination and at a suppression hearing established that, after Grant was dispatched to a heroin overdose at 105 West Mason, he was advised that the incident was the third reported overdose that day. As a result of information gathered by Grant from speaking with Heard and Carson, the police went to defendant's apartment at 225 West Mason in search of the tainted heroin. When defendant did not open the door, the officers, to prevent the possible destruction of evidence, forced entry and secured defendant and the second man in the apartment. Grant then left to obtain a search warrant for the apartment. According to Grant, all the information contained in the affidavit underlying the search warrant was known to him before the officers' entry into the apartment. The officers saw no drugs during the initial entry of the apartment other than residue in a toilet that was flushing as they entered. Both Grant and Mills testified that the apartment was not searched until after the warrant arrived.

On these facts, it is clear that nothing seen by the police during their initial entry prompted them to seek a warrant. Rather, the search warrant was based on information obtained from Carson before entry into the apartment, and the police were prompted to obtain the warrant based on their investigation of the origin of the possibly tainted heroin. Because the information contained in the affidavit was obtained from a source independent of and unrelated to the warrantless police entry, the trial court properly denied defendant's motion to suppress.

III. Sufficiency of the Evidence

Defendant further argues that the evidence was insufficient to sustain his convictions for maintaining a drug house and possession with intent to deliver Vicodin. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. Rather, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

A. Maintaining a Drug House

MCL 333.7405(1)(d) provides that a person

> [s]hall not knowingly keep or maintain a . . . dwelling . . . that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.

In *People v Thompson*, 477 Mich 146, 155; 730 NW2d 708 (2007), our Supreme Court concluded that "the phrase 'keep or maintain' implies usage with some degree of continuity that

can be deduced by actual observation of repeated acts or circumstantial evidence . . . ." The Court further opined:

> [W]e reiterate that "keep or maintain" is not synonymous with "use." Hence, if the evidence only shows that defendant used a [dwelling] to keep or deliver drugs on one occasion, and there is no other evidence of continuity, the evidence is insufficient to establish that defendant kept or maintained a drug [house] in violation of MCL 333.7405(1)(d). [*Id.* at 157-158.]

Viewed in a light most favorable to the prosecution, the evidence was insufficient to prove that defendant maintained a drug house. While there was sufficient evidence that defendant lived at 225 West Mason, apartment three, and had illegal drugs in the apartment on March 2, 2006, the evidence of continuity was lacking. Defendant moved into the apartment a day or two before the police seized the illegal drugs from the apartment. The property manager for 225 West Mason testified that defendant signed a lease for the apartment on February 28, 2006, and moved in that day or the next, March 1, 2006. She personally cleaned the apartment and there was nothing in the apartment before defendant took possession. Viewed in a light most favorable to the prosecution, the evidence showed that defendant used the apartment to keep or maintain drugs on one occasion. There was no other evidence of continuity to show that defendant kept or maintained the apartment for the purpose of keeping or selling drugs. Consequently, we conclude that there was insufficient evidence to support defendant's conviction of maintaining a drug house and, accordingly, vacate that conviction.

B. Possession with Intent to Deliver Vicodin

With regard to defendant's conviction for possession with intent to deliver Vicodin, defendant challenges the possession and intent to deliver elements. Possession of a controlled substance may be either actual or constructive, and may be joint as well as exclusive. *Wolfe, supra* at 519-520. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Id.* at 521. A person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. *Id.* at 520. "The essential question is whether the defendant had dominion or control over the controlled substance." *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). An intent to deliver may also be proven by circumstantial evidence. *People v Williams*, 268 Mich App 416, 422; 707 NW2d 624 (2005). Specifically, an intent to deliver may be inferred from the amount of the controlled substance possessed. *Id.*

Viewed in a light most favorable to the prosecution, the circumstantial evidence established that defendant possessed the Vicodin with an intent to deliver. Defendant admitted that he resided in the one-bedroom apartment where the baggie containing 46 Vicodin pills was found. The Vicodin pills were found in defendant's bedroom on a shelf directly next to a tin containing marijuana. Defendant admitted ownership of the marijuana, but claimed that the Vicodin pills belonged to his girlfriend. A pharmacist testified that defendant's girlfriend was prescribed only regular strength generic Vicodin and that some of the Vicodin pills seized were inconsistent with her prescription. Further, the pills were not stored in a prescription bottle, but in a clear plastic baggie and there were no prescription bottles in the bedroom. Grant, who had

training and experience in narcotic cases, explained that "the way [the Vicodin pills were] packaged and the fact that [they were] located directly next to the 13 individually packaged baggies of marijuana" indicated that the 46 pills of Vicodin were used for sale. Also, there were no other women's items found inside the apartment, only defendant's belongings.

The jury could reasonably infer from this evidence that defendant exercised dominion and control over the Vicodin with the intent to deliver the pills. While defendant presented a different account, it was up to the jury to determine which account was credible. *Nowack, supra.* In sum, viewed in a light most favorable to the prosecution, the evidence was sufficient to sustain defendant's conviction for possession with intent to deliver Vicodin.

Affirmed in part and vacated in part.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra