

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HOWARD EARL CARROLL,

Defendant-Appellee.

UNPUBLISHED
September 17, 2009

No. 290548
Wayne Circuit Court
LC No. 08-013798-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RANDY EARL CARROLL,

Defendant-Appellee.

No. 290549
Wayne Circuit Court
LC No. 08-013798-02

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SUSAN TAYLOR,

Defendant-Appellee.

No. 290550
Wayne Circuit Court
LC No. 08-013798-03

Before: Sawyer, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's February 3, 2009 order that suppressed evidence obtained from the execution of a search warrant.¹ Because we conclude that the search warrant was supported by probable cause, we reverse and remand.

On appeal, plaintiff argues that the trial court erred in concluding that the affidavit offered in support of the search warrant did not establish probable cause. Alternatively, plaintiff argues that the good-faith exception recognized in *People v Goldston*, 470 Mich 523; 682 NW2d 479 (2004), is applicable and the trial court erred in suppressing the evidence. A trial court's ultimate ruling on a motion to suppress is generally reviewed de novo. *People v Hrlic*, 277 Mich App 260, 262-263; 744 NW2d 221 (2007). However, "[a] magistrate's determination of probable cause should be paid great deference by reviewing courts." *People v Keller*, 479 Mich 467, 474; 739 NW2d 505 (2007) (quotations omitted). To afford deference to the magistrate's decision, a reviewing court is simply required to ensure that there is a substantial basis for the magistrate's conclusion that probable cause exists. *People v Martin*, 271 Mich App 280, 297; 721 NW2d 815 (2006), *aff'd* 482 Mich 851 (2008).

A search warrant may not be issued unless probable cause exists to justify the search. US Const, Am IV; Const 1963, art 1, § 11; MCL 780.651(1); *Martin*, *supra* at 298. Probable cause "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) (quotations omitted). Probable cause may be based on information supplied by an unnamed informant if the affidavit contains "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." MCL 780.653(b).

Here, the search warrant was based on an affidavit in which the affiant relayed information obtained from an unnamed informant. According to the affidavit, the informant had observed marijuana in the house within the last 48 hours, and had been told by "Earl Carroll" that the marijuana was for sale. These statements indicate that the informant had personal knowledge and that his information was not based on rumor. See *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). Also, according to the affidavit, the informant had provided police with credible information on at least ten prior occasions. "[O]ne recognized method of establishing the trustworthiness of the informant is a disclosure that the informant provided information on past occasions which later proved to be correct upon investigation."

¹ In Docket No. 290548, defendant Howard Earl Carroll was charged with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of a taser, MCL 750.224a, and possession of a firearm during the commission of a felony, MCL 750.227b. In Docket No. 290549, defendant Randy Earl Carroll was charged with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of less than 25 grams of a mixture containing cocaine, MCL 333.7403(2)(a)(v), and possession of a firearm during the commission of a felony, MCL 750.227b. In Docket No. 290550, defendant Susan Taylor was charged with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. The three defendants were scheduled to be tried together.

People v Walker, 401 Mich 572, 582-583; 259 NW2d 1 (1977). In addition, the affidavit states that the information the informant gave with regard to the names, ages, addresses, and vehicles of defendants Howard Carroll and Randy Carroll was, in fact, verified. The affidavit supported a determination that the informant was credible. Accordingly, the statutory requirements of MCL 780.653(b) were met. Moreover, when the allegations in the affidavit are read in a commonsense and realistic manner, a reasonably cautious person could have concluded that there was a substantial basis for inferring that contraband or evidence of a crime would be found at the places described. *Martin, supra* at 297, 301. The trial court erred in determining that the search warrant was not supported by probable cause.

Even if the warrant was not supported by probable cause, we would conclude that the exclusionary rule does not require suppression of the evidence. Our Supreme Court has adopted the good-faith exception to the exclusionary rule. *Goldston, supra* at 526, 541. Thus, the exclusionary rule does not require suppression of evidence that was seized in reasonable, good-faith reliance on a search warrant that is ultimately found defective. *Id.* at 525-526. However, “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.” *Id.* at 531 (quotations omitted). Here, the affidavit was not so lacking in indicia of probable cause that reliance on it was entirely unreasonable. In addition, there is no evidence to suggest that the magistrate wholly abandoned her judicial role. “[A]n appellate court’s determination that an affidavit was insufficient does not, in and of itself, provide adequate support for the conclusion that a magistrate ‘wholly abandoned his judicial role.’ Abandoning the judicial role requires more than reaching a different legal conclusion from that of an appellate court,” *Keller, supra* at 474 n 17, such as the magistrate becoming personally involved in the case so that she can no longer act in a neutral and detached manner in regard to the warrant application, see *Lo-Ji Sales, Inc v New York*, 442 US 319, 329; 99 S Ct 2319; 60 L Ed 2d 920 (1979). There was no such personal involvement by the magistrate in this case.

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

/s/ David H. Sawyer
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra