

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHAWN ADAMS,

Defendant-Appellee.

UNPUBLISHED

October 1, 2009

No. 286915

Wayne Circuit Court

LC No. 08-007633-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court's order dismissing charges of possession with intent to deliver 45 or more kilograms of marijuana, MCL 333.7401(2)(d)(i), conspiracy to possess with intent to deliver 45 or more kilograms of marijuana, MCL 750.157a, and possession of a firearm during the commission of a felony, MCL 750.227b. The court dismissed the charges after granting defendant's motion to suppress the evidence. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The evidence in question was seized during the execution of a search warrant at a house on Winthrop in Detroit, Michigan. The trial court agreed with defendant that the affidavit submitted in support of the request for a search warrant was insufficient to establish probable cause to believe that evidence of drug trafficking could be found at the Winthrop house. We agree.

The affiant to the search warrant affidavit was Dearborn Police Officer Jon DeKiere, who, after reciting his qualifications and experience in participating in narcotics investigations and knowledge of methods employed by drug traffickers, stated the following:

4. In June of 2007, Ofc. DeKiere received information from Sgt. Cariveau regarding suspicious activity at 7833 Mead in the City of Dearborn. This activity consisted of vehicles from outside Dearborn coming at all hours of the day and night and only staying for a few minutes before leaving.

5. On July 23, 2007 Ofc. DeKiere observed a black Yukon with Michigan license plate BKU4752 parked in the driveway of 7833 Mead. A records check in the Michigan Secretary of State shows the vehicle to be registered to Shelia Faye Brown, 18727 In Brook Apt. #1, Northville, Michigan.

6. At approximately 1640 hours on July 24, 2007 Ofc. DeKiere observed the same black Yukon with Michigan license BKU4752 turn off Tireman into the parking lot of Vegas Liquor (Tireman/Greenfield). The Yukon backed into a parking space away from the entrance to Vegas Liquor leaving several other empty parking spaces all around it. Both the driver and passenger stayed in the vehicle for approximately ten minutes until a Chevy HHR with Michigan license AGY6674 backed into the parking spot next to the driver's side of the Yukon. The passenger of the Yukon, later identified as Marquis Workman, got in the passenger side of the HHR. Secretary of State records show the HHR to be a rental car from Enterprise Rental. In addition, that license plate was shown to be invalid and replaced.

7. After several minutes, both the female driver of the HHR, later identified as Toni Talley, and Marquis Workman exited the HHR. Marquis Workman then got in the driver's side of the HHR leaving the Vegas Liquor parking lot. While Talley got in the passenger side of the Yukon and also left the parking lot. Members of the Dearborn Police Narcotics Unit maintained constant surveillance of the HHR until it pulled into the driveway of the 7282 Winthrop, City of Detroit. Marquis Workman was seen exiting the HHR and approaching the North side door of the residence. Surveillance was maintained on 7282 Winthrop.

8. After several minutes, the Yukon with Talley pulled into the alley on the Northwest corner of Warren and Greenfield. The Yukon parked and waited in the alley. After several minutes, the HHR driven by Marquis Workman backed out of the driveway of 7282 Winthrop and went South on Winthrop to the CVS parking lot. Under surveillance, Marquis Workman parked and made a cell phone call. At this same time, the driver of the Yukon, later identified as Donte Workman[,] was seen answering a cell phone. Several seconds later, the HHR left the CVS and drove directly down the alley toward Greenfield where Talley and Donte Workman were still waiting in the Yukon. As seen before, Talley got back into the HHR and Marquis got back into the passenger side of the Yukon. Both vehicles left the alley at Greenfield.

9. Based on the training and experiences of the officers involved, it was believed a drug transaction took place as a result of all the suspicious activities of Marquis Workman, Donte Workman, and Toni Talley. Uniformed officers from the Dearborn Police Department conducted a traffic stop on Toni Talley in the HHR. Upon approach, officers smelled a heavy odor of Marijuana. In addition, they observed two large white bags next to Talley. Sticking out of one of the white bags was a clear bag of suspected Marijuana. Talley was placed under arrest.

10. A traffic stop was then conducted on the two Workmans in the Yukon and both were placed under arrest. A search of Marquis Workman, subject who went to 7282 Winthrop, was in possession of approximately \$4,363 cash.

11. Your Affiant strongly believes based on his training, experience, observations, and the observations of other experienced officers that 7282 Winthrop, in the City of Detroit, is involved in the sales, storage, and facilitation of narcotic-trafficking activities.

12. Affiant believes that a search of 7282 Winthrop, city of Detroit, will help enhance the prosecution of this case and further the investigation of Marijuana trafficking.

A search warrant may not be issued unless probable cause to justify the search is shown. US Const, Am IV; Const 1963, art 1, § 11; *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006), aff'd 482 Mich 851 (2008). "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), quoting *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992). "If the search warrant is supported by an affidavit, the affidavit must contain facts within the knowledge of the affiant and not mere conclusions or beliefs. The affiant may not draw his or her own inferences, but rather must state matters that justify the drawing of them." *Martin*, supra at 298 (citations omitted).

In reviewing a finding of probable cause, a court must read the warrant and underlying affidavit "in a commonsense and realistic manner to determine whether a reasonably cautious person could have concluded that there was a substantial basis for finding probable cause." *Id.* The magistrate's determination of probable cause is entitled to great deference. *People v Keller*, 479 Mich 467, 477; 739 NW2d 505 (2007).

The prosecution argues that the search warrant was not defective because the factual statements in the affidavit were sufficient to establish probable cause that contraband or evidence of a crime would be found in the Winthrop house. The prosecution contends that based on the activity observed by Officer DeKiere, it may be logically inferred that Marquis Workman went to the house on Winthrop to pick up marijuana, which he delivered to Toni Talley. The prosecution further contends that although the affidavit does not state that Officer DeKiere saw Marquis carrying bags from the house on Winthrop, the officer's assumption that Marquis brought the marijuana from the house was "more reasonable than the only other possibility—that the bags were on the seat when [Marquis] initially got into the car." According to the prosecution, the entire "charade" that Marquis and Talley "played-out was for the purpose of getting the marijuana from the Winthrop house to the Chevy. So, a search of the Winthrop house was warranted."

The trial court did not err in finding that no probable cause existed to justify the search of the Winthrop house. The affidavit describes a series of transactions involving two vehicles and their occupants: the Yukon, which had been observed at the house on Mead Street in Dearborn, Michigan, which was the focus of a narcotics investigation, and the Chevy HHR, which was suspicious only because of its involvement in the observed transactions with the Yukon. While Officer DeKiere believed that the actions of Marquis, Donte Workman, and Talley, as the drivers and passengers of these vehicles, suggested that they were involved in a drug transaction, the only mention in the affidavit of any connection between any of these people to the Winthrop residence was an observed brief stop there by Marquis while driving the Chevy HHR. The

affidavit does not mention seeing Marquis take anything into the Winthrop house or carry anything from the house. It also does not indicate that he was wearing clothing that would enable him to easily hide a large amount of marijuana, or that any bulges were observed in his clothing. The affidavit also lacked any information indicating that Marquis, or any of the other two individuals observed during the transactions, resided in the Winthrop house or had any relationship to the residents of the house. At the motion hearing, the prosecution characterized the officer's belief that drugs were in the house on Winthrop as "a guessing game." Even recognizing that great deference must be given to a magistrate's determination of probable cause, *Keller, supra* at 477, we agree with the trial court that the affidavit was insufficient to support a belief that the Winthrop house was connected to drug activity. The affidavit does not provide a "substantial basis" to infer a "fair probability" that evidence of a crime would be found at that residence. *Kazmierczak, supra* at 417-418.

The prosecution alternatively argues that even if the search warrant is invalid, suppression is not required because the police executed the warrant with a good-faith belief that it was properly issued. In order for the good-faith exception to apply, the "officer's reliance on a magistrate's probable cause determination . . . must be objectively reasonable." *People v Goldston*, 470 Mich 523, 531; 682 NW2d 479 (2004), citing *United States v Leon*, 468 US 897, 919-921; 104 S Ct 3405; 82 L Ed 2d 677 (1984). The good-faith exception does not apply where "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[,] . . . 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.*, quoting *Leon, supra* at 923 (quotations omitted). In this case, Officer DeKiere was both the affiant whose sworn statement served as the basis for the search warrant and one of the officers who executed the warrant. It cannot be said that Officer DeKiere and the other executing officers objectively and reasonably relied on the magistrate's finding of probable cause given the lack of information in the affidavit linking the Workmans or Talley to the Winthrop house, with the exception of one brief stop there by Marquis, or indicating that contraband or other evidence of a crime would be found in the house, as described above. Therefore, the good-faith exception does not apply in this case.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Jane M. Beckering