

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ADAM LAWRENCE CHAKUR,

Defendant-Appellee.

UNPUBLISHED
February 23, 2010

No. 289143
Wayne Circuit Court
LC No. 08-012237-FH

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion to suppress evidence and dismissing the case. We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Officer Ibarra of the Detroit Police Narcotics Conspiracy section received a tip from a confidential informant that defendant was selling marijuana or cocaine from a residence located at 1542 Rademacher in Detroit. Based on the tip, Ibarra conducted an independent investigation. He discovered that a similar complaint had been made three weeks earlier. A property record check showed that a person other than defendant owned the Rademacher address, as well as an address given as defendant's actual residence in Lincoln Park. Additionally, the investigation revealed that defendant had been the target of a drug trafficking investigation by the Drug Enforcement Agency in 2004.

After the initial investigation, Ibarra conducted surveillance on defendant and the residence on three separate days. During that time, Ibarra observed conduct that, based on his experience, led him to believe that drug trafficking was occurring. Defendant was observed driving different vehicles from the Lincoln Park address to the residence on Rademacher. Ibarra also observed several individuals arrive at the residence and engage in transactions with defendant where they gave defendant money in exchange for a small item.

Ibarra obtained a search warrant for the residence on Rademacher. As police officers entered the home, defendant fled through a kitchen window. As defendant was fleeing, one of the officers observed a plastic baggie of cocaine fall from defendant's person into the sink. A search of the home resulted in the seizure of a shotgun in the kitchen cabinet, as well as cocaine, plastic baggies, and a digital scale. Defendant was charged with possession with intent to deliver 50 grams or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), possession of 50

grams or more but less than 450 grams of cocaine, MCL 333.7403(2)(a)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b.

Defendant moved to suppress the evidence, arguing that the affidavit on which the search warrant was based was deficient. The trial court found that the search warrant lacked probable cause and that the good faith exception did not apply, and granted defendant's motion to suppress the evidence and dismissed the case.

We review a trial court's findings of fact in connection with a motion to suppress for clear error, and review the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997). A reviewing court should give great deference to a magistrate's determination of probable cause. *People v Keller*, 479 Mich 467, 473-474; 739 NW2d 505 (2007). When reviewing a decision to issue a search warrant, the court looks to "whether a reasonably cautious person could have concluded there was a 'substantial basis' for the finding of probable cause." *People v Martin*, 271 Mich App 280, 297; 721 NW2d 815 (2006), quoting *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992).

A search warrant must not issue in the absence of probable cause. US Const, Am IV; Const 1963, art 1, §11. Probable cause exists when the facts and circumstances demonstrate a "fair probability" that illegal materials or evidence of a crime will be found in the place to be searched. *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000). The existence of probable cause is determined by the totality of the circumstances. *Illinois v Gates*, 462 US 213, 230-231; 103 S Ct 2317; 76 L Ed 2d 527 (1983). In determining whether probable cause exists, a magistrate must consider only those facts and circumstances in the affidavit presented. MCL 780.653. The affiant must have knowledge of the facts contained in the affidavit and present the facts without regard to his own inferences. *Martin*, 271 Mich App at 298. However, the affiant's statements regarding his experience are relevant factors for the magistrate to consider when determining probable cause. *Darwich*, 226 Mich App at 639.

Generally, where a search is conducted in absence of probable cause, application of the exclusionary rule is the proper sanction. See *People v Hyde*, 285 Mich App 428, 439; 775 NW2d 833 (2009). However, a good faith exception to the exclusionary rule has been recognized. *People v Goldston*, 470 Mich 523, 541; 682 NW2d 479 (2004) (adopting the good-faith exception announced in *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984)). The purpose of the exclusionary rule is to deter police misconduct; therefore where there is an objectively reasonable reliance on a search warrant issued by a magistrate, application of the rule is not appropriate. *Goldston*, 470 Mich at 530. The good faith exception does not apply where the police mislead a magistrate, the magistrate "abandons his judicial role," or police rely on a warrant "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id.* at 531 (quoting *Leon*, 468 US at 923).

Ibarra began his investigation when he received a tip from a confidential informant that defendant was selling marijuana or cocaine from the residence on Rademacher. The findings of that investigation, and not merely the statements of the confidential informant, supported the request for the search warrant. Given the totality of the circumstances, a reasonable magistrate could have found the existence of probable cause. That decision is entitled to great deference. *Keller*, 479 Mich at 473-474.

Although an informant's tip set police on the path of investigation, it was the discovery of evidence during the course of that investigation that provided the basis for the magistrate's determination of probable cause. We find that the information contained in the affidavit supported a finding of probable cause. Because we find that the affidavit provided a sufficient basis for a finding of probable cause, we need not discuss the application of the good faith exception.

The trial court erred in suppressing the evidence and dismissing the case. We reverse that decision and remand the case to the trial court for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Alton T. Davis