

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HERMAN JOHNSON,

Defendant-Appellee.

UNPUBLISHED
October 31, 1997

No. 199692
Recorder's Court
LC No. 96-000620

Before: Saad, P.J., and O'Connell and M. J. Matuzak*, JJ.

PER CURIAM.

The prosecution appeals as of right from the trial court's November 4, 1996 order of dismissal. We reverse.

Defendant was charged with possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii), MSA 14.15(7401)(2)(a)(iii), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). He was arrested outside of his residence, cocaine was found on his person and marijuana was found inside the residence. Defendant filed motions to quash the information, quash the search warrant and suppress the evidence. The trial court denied the motion to quash the information, but granted the motion to quash the search warrant and suppress the evidence.

On January 3, 1996, Sergeant Keith Newton executed a search warrant at defendant's residence. The warrant described the residence as "the 9th residence south of Glendale St., on the east side of Sussex St., between physically marked residence of '12678' and '12692', City of Detroit, County of Wayne, State of Michigan." The residence was further described as "a two story wood frame single family house, gray in color with black trim." The warrant provided that "all rooms, compartments, and storage areas" of the residence could be searched for drugs, drug paraphernalia, proof of residency, illegal drug proceeds, records pertaining to drug trafficking, weapons and ammunition. The warrant also provided for the search of "[o]ne black male suspect further described as a medium completed [sic] black male, tall, thin, unknown age with dark hair in a French curl hairdo"

* Circuit judge, sitting on the Court of Appeals by assignment.

as well as any other persons at the residence who “specifically express[ed] intent to purchase controlled substances.”

In granting defendant’s motion to quash the search warrant and suppress the evidence, the trial court found that the description of defendant was vague, that there was no evidence that defendant was arrested inside of his residence or that he was attempting to purchase any controlled substance, that there was no specificity in the description or location of the drugs, and that there was insufficient evidence that the informant was reliable. On appeal, plaintiff argues that the trial court erred in suppressing the evidence seized in connection with defendant’s arrest and the search of defendant’s residence. We agree and hold that the trial court’s ruling was clearly erroneous. *People v Grimmett*, 97 Mich App 212, 214; 293 NW2d 768 (1980).

A search warrant must describe with particularity the place to be searched and the persons or things to be seized. US Const Am IV, Const 1963, art 1, § 11; *People v Toodle*, 155 Mich App 539, 543; 400 NW2d 670 (1986). A warrant authorizing a general search is illegal because it leaves the scope of the search to the officer’s discretion. *Toodle, supra* at 548. A valid search warrant should therefore provide “reasonable guidance” to the executing officers and should prevent their exercise of unfettered discretion in determining what is subject to seizure. *People v Zuccarini*, 172 Mich App 11, 15; 431 NW2d 446 (1988). The degree of specificity required, however, depends on the circumstances and the types of items involved. *Zuccarini, supra* at 15.

We believe that the search of defendant’s person was authorized by the combination of his physical presence outside the open side door of the residence and his description in the search warrant. A person must be described such that he can be identified with reasonable certainty. *People v Krokker*, 83 Mich App 474, 477-478; 268 NW2d 689 (1978). In this case, defendant was described as a resident of a particular location with certain distinguishable physical characteristics (e.g. “French curl hairdo”). Given that a person matching the description in the warrant he was found two feet outside of an open side door at the single family dwelling designated on the warrant, the officer had reasonable cause to believe that the individual was defendant. Furthermore, we believe that the trial court misinterpreted the search warrant; the warrant does not stipulate that defendant must be arrested inside his home or that he must attempt to purchase illegal narcotics. While the warrant does authorize the arrest of any persons who came to defendant’s residence with the intent to purchase controlled substances during the execution of the warrant, this authorization is distinct from that authorizing the search of defendant.

We also find that the warrant’s description of the location of the drugs was sufficiently particular. As said in *People v Ranes*, 230 Mich 384; 203 NW2d 77 (1925), “[t]echnicalities of description as in a conveyance are not required.” We believe that in this case, where the location of defendant’s single-family residence was accurately described in the warrant, the executing officers could permissibly search any part of that residence in which illegal drugs or paraphernalia might be located. The officers’ discretion in determining what was subject to seizure was limited to items connected to the sale of narcotics. *Zuccarini, supra* at 15-16. We do not feel that it was necessary to further limit the scope of the search.

Finally, the trial court erred in concluding that the information in the affidavit was not reliable. When information is obtained from an unnamed person, the affidavit must show that the person is credible *or* that the information is reliable. MCL 780.653(b); MSA 28.1259(3)(b). In this case, the informant had recently executed a controlled narcotics purchase at the location to be searched. The controlled purchase and independent investigative activities of the attesting officer were sufficient to establish probable cause for the warrant. *People v Head*, 211 Mich App 205, 209; 535 NW2d 563 (1995). Given these facts, we believe that the trial court erred in suppressing the evidence seized in connection with the arrest of defendant and search of defendant's residence.

Reversed.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak