

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CLIFFORD L. JOHNSON,

Defendant-Appellee.

UNPUBLISHED
December 2, 1997

No. 200257
Recorder's Court
LC No. 96-004978

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

The Wayne County Prosecutor appeals by right dismissal of drug charges (marijuana) against defendant, arising from execution of a search warrant at defendant's premises at 3715 E. Nevada in the City of Detroit on June 9, 1996. The Recorder's Court concluded that the warrant, or its execution, was in violation of the Fourth Amendment and that the evidence seized pursuant to the warrant therefore had to be suppressed. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Based on surveillance conducted and an arrest of a third person made on June 5, 1996, an application for search warrant was presented to a Wayne County magistrate, and a search warrant issued on June 5, 1996, for the premises at 3715 E. Nevada. However, for reasons unexplained in this record, the warrant was not executed until June 9, 1996.

Where there is a delay between the acquisition of information establishing probable cause for issuance of a search warrant and presentation of such information to a magistrate, no warrant may issue except upon a showing of intervening facts giving reasonable cause to believe that the criminal activity is continuing and presently occurring at the time the warrant is issued. *People v Broilo*, 58 Mich App 547, 550; 228 NW2d 456 (1975). Where, as here, the information establishing probable cause is promptly presented to a magistrate, but execution of the warrant is delayed, the same principle obtains, and there must be facts from which it can be determined that probable cause continued to exist at the time the warrant was executed for the search to pass

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

muster under the Fourth Amendment. *People v David*, 119 Mich App 289, 296; 326 NW2d 485 (1982).

Here, a known drug dealer was seen entering the premises at 3715 E. Nevada on June 5, 1996, empty handed, and emerging a short time later with a bag which was found to contain a substantial quantity of marijuana. On this basis, giving due deference to the reasonable determination of the magistrate, probable cause to issue the warrant existed on June 5, 1996. *People v Russo*, 439 Mich 584, 602-604; 487 NW2d 698 (1992). The question for resolution on appeal, therefore, is whether such probable cause continued when the warrant was not executed until four days later.

The subject initially arrested leaving the 3715 E. Nevada address had been arrested a little more than a year earlier for trafficking in large quantities of marijuana. The quantity of marijuana seized as this same person was seen leaving the 3715 E. Nevada address was about a pound (450 grams). While only one transaction was observed by surveilling police officers, the nature of the transaction suggests that the parties involved were trafficking in marijuana on other than a casual basis. It is reasonable to infer, within a probable cause standard, that persons dealing in these quantities of marijuana would either have a larger supply on hand than was seized at the time of the initial arrest, or would be obtaining a resupply in order to continue their illegal trade. We conclude that the delay in this case was within tolerable constitutional limits. See *United States v Walker*, 871 F Supp 1, 2 (D DC, 1994).

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

/s/ Gary R. McDonald
/s/ Myron H. Wahls
/s/ John R. Weber