

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JANICE WILLIAMS,

Defendant-Appellee.

UNPUBLISHED

September 11, 1998

No. 207335

Kalamazoo Circuit Court

LC No. 97-000608-FH

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

The prosecution appeals by leave granted from the circuit court's order granting defendant's motion to suppress evidence. We reverse and remand for further proceedings.

Defendant is charged with possession of 225 grams or more but less than 650 grams of cocaine, MCL 333.7403(2)(a)(ii); MSA 14.15(7403)92(a)(ii), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). Defendant filed a motion to suppress evidence arguing that there was not probable cause to support the issuance of the search warrant. When the police executed the search warrant, they found more than one ounce of marijuana and crack cocaine. The trial court granted defendant's motion to suppress the evidence, finding that the search warrant affidavit was invalid where the unnamed informant had not given personal knowledge, and that the four-day gap in the warrant's execution rendered it to be stale.

The prosecution first argues that the trial court erred in determining that the affidavit in support of the search warrant was invalid because the affidavit did not expressly state that the unnamed informant spoke with personal knowledge.

A trial court's factual findings following a suppression hearing will not be disturbed unless the findings are clearly erroneous. *People v LoCicero (After Remand)*, 453 Mich 496, 500; 556 NW2d 498 (1996). The application of the constitutional standard to essentially uncontested facts is not, however, entitled to the same deference. *Id.*, pp 500-501. Constitutional issues are reviewed do novo by this Court. *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996).

In the present case, the trial court construed MCL 780.653(b); MSA 28.1259(3)(b) to require an express allegation that the unnamed informant speak with personal knowledge of the information. However, no such requirement is mandated by the statute. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). Therefore, the trial court's exclusion of the informant's information on the basis that the affidavit failed to state expressly that the informant spoke with personal knowledge was error.

The prosecution also argues that the trial court erred in finding that the four-day delay between the last trash pull and the issuance of the warrant rendered the information in the affidavit stale and therefore insufficient to establish probable cause for the search.

After it excluded the informant's information, the trial court determined that:

[it was left] with the evidence of a small quantity of marijuana stems and seeds and plant material and rolling paper being found in the trash outside where the alleged defendant lived in 1995. And then over a year later, in December 1996.

From these facts, a reasonably cautious person could have concluded that there was marijuana on the premises on 12/10/96 when evidence was pulled from the trash in front of 114 West Emerson.

However, I find that there was not such probable cause to believe that marijuana evidence was still on the premises on December 14, 1996, when the search took place.

Here, we have a four-day gap between the finding of a small amount of marijuana material, and the trash and the search. Therefore, I find the staleness cases operate.

[T]he motion to suppress all evidence seized in the improper search of the home is suppressed, including the cocaine.

"It is settled law that probable cause to search must exist at the time the search warrant is issued . . . and that probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct is in the stated place to be searched." *People v Russo*, 439 Mich 584, 606-607; 487 NW2d 698 (1992). Furthermore,

[t]ime as a factor in the determination of probable cause to search is weighed and balanced in light of other variables in the equation, such as whether the crime is a single instance or an ongoing pattern of protracted violations, whether the inherent nature of a scheme suggests that it is probably continuing, and the nature of the property sought, that is, whether it is likely to be promptly disposed of or retained by the person committing the offense. . . . The matter must be determined by the circumstances of each case. [*Id.*, pp 605-606.]

Moreover, when assessing a magistrate's decision that probable cause to search existed, reviewing courts are to read search warrants and the underlying affidavits in a common sense manner. *People v Sloan*, 450 Mich 160, 168; 538 NW2d 380 (1995). We find that a consideration of these factors and a common-sense reading of the affidavit establish probable cause to believe that evidence of criminal conduct would be found in defendant's residence on December 14, 1996, the date the search warrant was executed.

In support of the search warrant, the affidavit contained information that, sometime between June 20, 1995, and June 22, 1995, Kalamazoo Police Officer William Moore consulted area directories which established that an individual named Janice Williams lived at 131 East Maple Street in the City of Kalamazoo, and that Moore conducted garbage pulls from defendant's East Maple Street address on June 22, 1995, and then again on July 7, 1995. In defendant's garbage, as verified by laboratory analyses, Moore found marijuana seeds and stems, plastic baggies containing marijuana residue, and documents linking defendant to the East Maple Street address both on June 22, and July 7, 1995. Subsequently, after checking directories, Moore verified that defendant had relocated to 114 West Emerson Street and that defendant had changed her last name from Williams to Bibbs. On December 10, 1996, Moore conducted another garbage pull in front of the West Emerson Street residence and found, as confirmed by laboratory analyses, marijuana stems and seeds, plastic baggies containing marijuana residue, one empty box of zig zag rolling papers, one hollow point bullet, one plastic baggie containing approximately one ounce of pine tree clippings, and various documents linking defendant to the West Emerson Street address. Both the affidavit and warrant were signed on December 13, 1996, and the search was executed on December 14, 1996.

When given a common-sense reading and considered in light of the factors set forth in *Russo, supra*, the information presented in the affidavit was sufficient to establish probable cause to believe that evidence of criminal conduct would be found in defendant's residence. Specifically, the three garbage pulls established an ongoing pattern of protracted violations in at least the possession of marijuana, rather than a single instance of criminal activity, in that marijuana was found at two addresses and on three occasions over a period of time spanning eighteen months. Furthermore, the inherent nature of drug use or trafficking suggests that it was probably continuing, particularly, again, in light of the fact that marijuana was found at both of defendant's residences on more than one occasion over a significant period of time. Finally, marijuana seeds and stems are sufficiently small and compact to be easily transferred or disposed of in the event that those in possession of it learn of an impending search. *Sloan, supra*, p 168; *Russo, supra*, pp 605-606.

Thus, the information in the affidavit was not stale by the time the search was executed four days after the last garbage pull, and was therefore sufficient to establish probable cause to believe that evidence of criminal conduct would be found in defendant's residence. Accordingly, we hold that the trial court erred in granting defendant's motion to suppress the evidence.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra