

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY GUTOWSKI,

Defendant-Appellee.

UNPUBLISHED

March 31, 2000

No. 221043

Wayne Circuit Court

LC No. 99-003180

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

The prosecution appeals by right from the trial court's order dismissing the charges against defendant and granting defendant's motion to suppress evidence seized from his home pursuant to a search warrant.¹ We reverse.

The prosecution argues that the trial court erred in suppressing the evidence because the affidavit submitted in connection with the warrant provided a substantial basis for finding probable cause. This Court reviews a trial court's findings of fact in deciding a motion to suppress for clear error, but the trial court's ultimate decision on the motion is reviewed de novo. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999); *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997). A ruling is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made. *People v Hampton*, 237 Mich App 143, 148; 603 NW2d 270 (1999).

A search warrant may issue only on a showing of probable cause that is supported by oath or affirmation. *People v Sloan*, 450 Mich 160, 166-167; 538 NW2d 380 (1995); Const 1963, art 1, § 11; MCL 780.651(1); MSA 28.1259(1)(1); MCL 780.653; MSA 28.1259(3). "Probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct could be found in a stated place to be searched." *People v Stumpf*, 196 Mich App 218, 227; 492 NW2d 795 (1992). In assessing a magistrate's determination in regard to probable cause, the search warrant and underlying affidavit must be read in a commonsense and realistic manner, and a reviewing court must pay deference to a magistrate's conclusion that probable cause existed. *Sloan*, *supra* at 168. Such deference requires the reviewing court to determine whether a reasonably cautious person could have concluded that the finding of probable cause had a "substantial basis." *Id.*

Here, Dearborn Police Corporal William Leavens executed an affidavit in connection with the search warrant. This affidavit provided sufficient information to allow a reasonably cautious person to conclude that there was a substantial basis for finding probable cause. The affidavit stated that on August 22, 1996, the Dearborn Narcotics Unit received information from an informant named Jacqueline Beach. Beach told the police that a white male known as the “Troll” was her supplier of cocaine and supplied cocaine to several Dearborn and Detroit bars. She also indicated that the “Troll” carried the cocaine in a small metal tin that he kept in his pocket and kept remaining quantities of narcotics in his home. The statements attributed to Beach were sufficient allegations from which the issuing magistrate could conclude that Beach had personal knowledge of the information. See MCL 780.653; MSA 1259(3) and *People v Powell*, 201 Mich App 516, 522-523, 530; 506 NW2d 894 (1993).

Despite the age of the information provided by Beach, the warrant was not issued on impermissibly stale information. The age of the information alone is not determinative of whether information is stale; instead, the information must be evaluated as part of the particular circumstances of the case. *People v Russo*, 439 Mich 584, 605-606; 487 NW2d 698 (1992); *Stumpf, supra* at 226. Here, Beach’s information from 1996 was corroborated and rendered relevant by the following additional information contained in the affidavit: (1) a Dearborn police officer observed defendant exchange money with a person – David Gray – in a Dearborn bar on February 23, 1999; (2) immediately after this exchange, another Dearborn police officer found one-eighth of an ounce of cocaine on Gray and subsequently arrested him; (3) Gray admitted to one of the officers that he bought the cocaine from someone called the “Troll;” (4) the Dearborn Narcotics Unit identified the “Troll” as defendant; (5) the same day of Gray’s arrest, yet another Dearborn Police officer followed defendant from the bar in question, arrested him, and found nine small packets of suspected cocaine in a small metal tin in his vest pocket; (6) a check on defendant’s criminal history revealed that he had two prior felony drug convictions; and (7) based on his training and experience, the affiant expected to find narcotics and firearms inside defendant’s home.

Considering the total circumstances set forth in the affidavit, the magistrate that issued the warrant had a substantial basis for finding probable cause that cocaine existed in defendant’s current home. Indeed, the fact that defendant stored cocaine in his home while dealing drugs in the past supported the conclusion that he also stored cocaine in his home during his more up-to-date drug dealings. Consequently, the trial court erred in granting defendant’s motion to suppress the evidence seized pursuant to the search warrant.

Reversed and remanded for reinstatement of the original charges. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Donald S. Owens

¹ Defendant was charged with possession with intent to deliver 225 to 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), possession with intent to deliver diazepam, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), possession with intent to deliver LSD, MCL 333.7401(2)(b); MSA 14.15(7401)(2)(b), and two counts of possession of a firearm by a felon, MCL 750.224(f); MSA 28.421(6). The trial court dismissed the charges, without prejudice, after the prosecution conceded that because of the court's suppression ruling, it did not have sufficient evidence to proceed to trial.