

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARIO PERRY,

Defendant-Appellee.

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UNPUBLISHED

April 21, 2000

No. 220279

Wayne Circuit Court

LC No. 99-002417

Before: Gribbs, P.J., and Doctoroff and T. L. Ludington\*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion to quash, and dismissing a charge of possession with intent to deliver marijuana. MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing a magistrate's decision to issue a search warrant, this Court must evaluate the warrant and underlying affidavit in a common-sense and realistic manner. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997). The Court must then determine whether a reasonably cautious person could have concluded under the totality of the circumstances that there was a substantial basis for the magistrate's finding of probable cause. *People v Russo*, 439 Mich 584, 603-605; 487 NW2d 698 (1992). Probable cause for a search exists where a person of reasonable caution would conclude that contraband or evidence of criminal conduct will be found in the place to be searched. *People v Chandler*, 211 Mich App 604, 612; 536 NW2d 799 (1995).

This Court reviews for clear error the trial court's findings of fact in deciding a motion to suppress. *Darwich*, *supra*, 637. We review de novo the trial court's ultimate decision. *Id.*

The trial court did not err in finding that the affidavit was insufficient to establish probable cause. Where the informant did not observe drugs or drug transactions, there was no substantial basis for finding probable cause. There was no showing that there was a reasonable probability

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

that controlled substances would be found at the location to be searched. *People v Brake*, 208 Mich App 233, 241; 527 NW2d 56 (1994).

Affirmed.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington