

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DOLPH D. CLARK,

Defendant-Appellee.

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UNPUBLISHED  
October 31, 2000

No. 223304  
Wayne Circuit Court  
LC No. 99-006862

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion to quash the search warrant and dismissing charges against defendant. We reverse.

Defendant was charged with possession with intent to deliver between 225 and 649 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d), and felony-firearm, MCL 750.227(b); MSA 28.424(2). His arrest followed a search of his home which was conducted based on a search warrant issued on April 21, 1999. The circuit court granted defendant's motion to quash, finding that the affidavit in support of the warrant failed to supply indicia of the reliability of the unnamed informant.

A search warrant and the underlying affidavit are to be read in a common-sense and realistic manner. *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992). Affording deference to the magistrate's decision requires that the reviewing court ensure there is a substantial basis for the magistrate's conclusion that there is a fair probability that contraband or evidence of a crime will be found at a particular place. *Id.* 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. *Id.* at 606-607.

The trial court erred in focusing on the reliability of the informant where the affidavit was primarily based on the direct observations of the affiant-police officer. *People v Williams*, 139 Mich App 104; 360 NW2d 585 (1984), held that a police officer-affiant's information regarding the single controlled buy can form a sufficient substantial basis for the magistrate's finding of probable cause. *Id.*

at 107. The reliability or the credibility of the informant is not at issue where the only information offered in the affidavit to support the warrant is the controlled buy, in which the affiant participated. Therefore, no hearsay is at issue. *Id.*

This case presents the unusual situation where the controlled buy was completed outside the house, where it could be observed by police. The affiant observed the whole transaction, and saw defendant go into the house and return with narcotics. These observations supplied a sufficient basis for a finding of probable cause, independent of any credibility questions regarding the informant. MCL 780.653; MSA 28.1259(3). See also *People v Tejada*, 181 Mich App 450, 464-468; 449 NW2d 908 (1989) (Griffin, J., dissenting).

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage