

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ALAN THOMAS,

Defendant-Appellant.

UNPUBLISHED

April 20, 2001

No. 221183

Oakland Circuit Court

LC No. 98-161447-FH

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

PER CURIAM.

Defendant appeals as of right from convictions of possession of 50-224 grams of cocaine with intent to deliver, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), for which he was sentenced to prison terms of four to twenty years and one to four years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the trial court erred in denying his motion to suppress evidence obtained pursuant to a search warrant. The trial court's ruling on a motion to suppress is reviewed de novo on appeal. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). When reviewing a magistrate's conclusion that probable cause to search existed, this Court does not review the matter de novo or apply an abuse of discretion standard. *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). Paying deference to the magistrate's determination that probable cause did exist, this Court considers only whether the actual facts and circumstances presented to the magistrate would permit a reasonably cautious person to conclude that there was a substantial basis for the finding of probable cause. *People v Sloan*, 450 Mich 160, 168-169; 538 NW2d 380 (1995), overruled on other grounds *People v Wager*, 400 Mich 118, 123; 594 NW2d 487 (1999).

Issuance of a search warrant must be based upon probable cause. MCL 780.651(1); MSA 28.1258(1)(1). "A magistrate can consider only the information in the affidavit made before him

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

in determining whether probable cause exists to issue a search warrant.” *People v Sundling*, 153 Mich App 277, 285-286; 395 NW2d 308 (1986).

The affidavit may be based on information supplied to the affiant by another person. If the other person is not named, the affidavit must contain affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information provided and that the person is credible or his information is reliable. MCL 780.653(b); MSA 28.1259(3)(b). Police officers are presumptively reliable. *People v Powell*, 201 Mich App 516, 523; 506 NW2d 894 (1993).

Probable cause to search must exist at the time the warrant is issued. *Russo, supra* at 606. “Probable cause to issue a search warrant exists where there is a ‘substantial basis’ for inferring a ‘fair probability’ that contraband or evidence of a crime will be found in a particular place.” *People v Kazmierczak*, 461 Mich 411, 418; 605 NW2d 667 (2000). The “search warrant and underlying affidavit are to be read in a common-sense and realistic manner.” *Russo, supra* at 604. “Time as a factor in the determination of probable cause to search is weighed and balanced in light of other variables” *Id.* at 605.

We reject defendant’s contention that the information in the affidavit was stale. Although police acted on a tip from a confidential informant received two months earlier, they undertook an independent investigation during which they observed defendant sell cocaine over a three-week period immediately preceding the issuance of the warrant, including sales made on the day the warrant was obtained. Thus the magistrate could reasonably conclude that defendant was likely to be in possession of drugs at the time the warrant was issued.

We also reject defendant’s contention that the warrant failed to show that the confidential informant spoke with personal knowledge and that his information was reliable. That the informant spoke with personal knowledge can be inferred from the facts provided, such as defendant’s name, race, address, place of business, and pager number. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). That his information was reliable was supported by the fact that the police conducted an independent investigation that corroborated the accuracy of most of the information provided. *Id.* In any event, information regarding the informant is necessary when the affidavit is based solely on informant information. *People v Rodriguez*, 65 Mich App 723, 727-728; 238 NW2d 385 (1975). Because the police conducted an independent investigation to verify the information supplied by the informant, further information about the informant’s personal knowledge and credibility or reliability was unnecessary. *People v Levine*, 461 Mich 172, 177-178; 600 NW2d 622 (1999); *People v Harris*, 191 Mich App 422, 425-426; 479 NW2d 6 (1991).

We further find that there was sufficient information to warrant a finding of probable cause to search defendant’s home. Not only did the informant indicate that defendant sold drugs from that location, the police observed defendant sell cocaine at work after driving there directly from home. The fact that he didn’t have to stop someplace where he might first obtain the cocaine made it reasonable to infer that he kept it at home and brought it with him to work. Such

information, coupled with the logical inference that drug traffickers often keep evidence of illicit activity in their homes, was sufficient to establish probable cause to believe that contraband would be found at defendant's residence. *People v Nunez*, 242 Mich App 610, 614-615; 619 NW2d 550 (2000).

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard