

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON LESHAWN ARTIS,

Defendant-Appellant.

UNPUBLISHED

May 8, 2001

No. 217667

Oakland Circuit Court

LC No. 98-161297 FH

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

WHITE, J. (*concurring in part and dissenting in part*).

I conclude that the trial court erred in failing to conduct an in camera hearing pursuant to *People v Underwood*, 447 Mich 695; 526 NW2d 903 (1994), and would remand for such a hearing.

At the preliminary examination, Detective Zupic testified that he received a call from a confidential informant with whom he had worked in the past, and had found to be reliable. The informant told him that at about 9:00 p.m. at the Shell gas station at 8-mile and Southfield, in Southfield, there would be a black male, named "Lee," about twenty-five years old, of average height and average build, with short braids in his hair, driving a gray or silver, mid-80's two-door Cutlass or Monte Carlo-type vehicle, and that he would have about three ounces of cocaine that would be secreted in the actual confines of the vehicle, for example, in the dashboard.

Defendant, who fit the informant's description, was observed at the gas station in a gray, mid-80's Regal at around 9:00 p.m. He appeared to be waiting for someone. When he left the gas station, Zupic directed an officer from the canine unit to effect a traffic stop. Defendant was stopped, he was unable to produce a license because his license was suspended. He also volunteered that there may be outstanding warrants for his arrest. The car was registered to defendant's wife. In response to the officer's questions, defendant stated that there were no weapons or drugs in the car, and that the officer could search the car. With the help of his dog, the officer finally uncovered two baggies of cocaine behind the panel of the right rear corner of the vehicle. Although it took a while to discover the cocaine, it was relatively quick and easy to disassemble and reassemble the car parts involved.

Defendant maintained that he had no knowledge that the cocaine was hidden in the car. He filed a motion requesting that the prosecution be required to produce the informant. He

asserted that he believed that the informant was someone actively involved in the sale of drugs, who had actually been in defendant's car at or near a certain intersection in Detroit, and that defendant had left the informant alone in his car so the informant could discuss business with friends. The prosecutor responded that the court should conduct an in camera hearing pursuant to *Underwood*. Rather than conduct such a hearing, the court denied the motion based on the preliminary examination testimony. The court concluded that the informant's testimony would not be helpful to defendant, and that there was insufficient reason to believe that the informant might have secreted drugs in defendant's car.

The defendant's position was, in effect, that he had no knowledge of the drugs, but that the informant did. The record does not reveal how the informant knew that there were drugs in the car.¹ The record does not rule out that the informant knew that there were drugs in the car and that defendant did not. It is possible that the informant knew that there were drugs in the car because he put them there, or he observed someone other than defendant put them there, or someone other than defendant told him that there were drugs hidden in the car. Further, the testimony of the officer who discovered the drugs does not rule out that someone other than defendant may have hidden the drugs in the car during a period of brief possession of the car. The trial court should have held an in camera hearing inquiring into the basis of the informant's information. Without holding such a hearing, the court could not know whether the informant had information helpful to the defense or essential to a fair determination of defendant's guilt. *Underwood, supra* at 697, 704, 709. I would remand with instructions to hold such a hearing.

As to defendant's other claims of error, I find no cause for reversal. I agree that defendant's request for production of the informant did not preserve all objections to Zupic's testimony regarding the information provided by the informant and the informant's reliability. Further, defense counsel first brought out the substance of the information supplied by the informant in her opening statement.

I join in the majority's discussion of the remaining issues.

/s/ Helene N. White

¹ At trial, but not at the preliminary examination, Zupic testified that the informant got his information from speaking to defendant; however, the context of the question seems to refer to the informant's knowledge that defendant would be at the gas station, rather than the information regarding there being drugs hidden in the car.