

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FRED L. CULVER,

Defendant-Appellee.

UNPUBLISHED

December 11, 2001

No. 222657

Wayne Circuit Court

LC No. 99-004437

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

PER CURIAM.

The prosecutor appeals as of right from the circuit court order which quashed a search warrant and resulted in the dismissal of the charges against defendant of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv). We affirm.

Defendant challenged the validity of the search warrant on various grounds, one of which we find to be dispositive: The search warrant failed to specify, in any manner, the items to be seized and, therefore, was an unconstitutional general warrant.

General warrants are prohibited by the Fourth Amendment; a particular description of things to be seized is required, and the executing officers must narrowly follow that description. US Const, Am IV; Const 1963, art I, § 11; *Andresen v Maryland*, 427 US 463, 480; 96 S Ct 2737; 49 L Ed 2d 627 (1976); *People v Coleman*, 436 Mich 124, 129-130; 461 NW2d 615 (1990); *People v Harajli*, 170 Mich App 794, 799; 428 NW2d 781 (1988). Also, MCL 780.654 mandates that “[e]ach warrant shall designate and describe the . . . property or thing to be seized.” The prohibition against general warrants and general searches serves “as a protection against unjustified intrusions on privacy.” *Horton v California*, 496 US 128; 110 S Ct 2301, 2310; 110 L Ed 2d 112 (1990); *Coleman, supra* at 130. We regard this “specificity” requirement to be fundamental to the interests protected by the Fourth Amendment to the United States Constitution.¹

¹ The Fourth Amendment is applicable to the states through the Fourteenth Amendment. *Mapp v Ohio*, 367 US 643, 81 S Ct 1684, 6 L Ed 2d 1081 (1961).

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [US Const, Am IV.]

Similarly, our state Constitution provides:

The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. [Const 1963, art 1, § 11.]

This mandate is clearly set forth in MCL 780.654, which provides, in pertinent part:

Each warrant shall designate and describe the house or building or other location or place to be searched and *the property or thing to be seized*. The warrant shall also state the grounds or the probable or reasonable cause for its issuance, or in lieu thereof, a copy of the affidavit may be attached thereto. [MCL 780.654.]

Here, the modified arrest warrant, used by police as a search warrant, failed to specify with any particularity the items to be searched for and seized. Plaintiff concedes this defect, but argues that (1) the warrant contained a “mistake in the wording,” (2) the items to be seized could be implied from reading the warrant and affidavit together, and (3) this Court should adopt a good faith exception to the Fourth Amendment exclusionary rule. We reject these arguments. Well-established constitutional law mandates that a search warrant state clearly and specifically what it is the officers are authorized to seek and seize. Absent this fundamental predicate, the search and seizure under the specific facts here, is simply unconstitutional.

We respectfully disagree with the dissent’s reasoning and conclusion. Here, the warrant allows a general search of the “[t]he entire premises” and states that defendant and three cars shall be located and searched. Had police intended to simply arrest defendant and to seize only those items in plain view or on defendant’s person, they should have obtained an *arrest* warrant to authorize entry into his home; *search* warrants do not provide for the seizure of criminal suspects. MCL 780.652; *People v Johnson*, 431 Mich 683, 689; 431 NW2d 825 (1988). Rather, because the officers modified an arrest warrant to create a search warrant, without specifying the items to be seized, it appears that police officers intended to enter the house in search for drugs. Further, because the warrant merely describes the places to be searched and does not identify the property or thing to be seized, the warrant gave police officers unrestrained, undirected discretion to determine what was subject to seizure, which is precisely what the particularization requirement of the Fourth Amendment seeks to prevent.

Without labeling it as such, the dissent’s assertions, in substance, support a “good faith exception” to this well-established “particularization” requirement. Our Courts have declined to adopt such an exception and, until our courts authorize “good faith” general warrants like the one in this case, we must follow the Fourth Amendment principle that a warrant must contain a

particular description of things to be seized. *People v Hill*, 192 Mich App 54; 480 NW2d 594 (1991); *People v Jackson*, 180 Mich App 339, 346; 446 NW2d 891 (1989).

Here, no matter how the warrant and supporting affidavit are read, strictly or liberally, the *place* to conduct the search is described, but not the thing or property to be seized. To sustain this search and seizure, we would have to ignore the well-recognized and long-standing constitutional and statutory particularization requirement. This we are not at liberty to do and to do so would jeopardize the liberties of all citizens protected by the Fourth Amendment.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer