

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTONIO D. PICKETT,

Defendant-Appellee.

UNPUBLISHED
December 3, 2002

No. 236263
Wayne Circuit Court
LC No. 01-003006

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing the charges against the defendant. We reverse and remand.

Defendant was charged with possession of less than fifty grams of cocaine with intent to deliver, MCL 333.7401(2)(a)(iv), possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. The evidence supporting the charges was seized during execution of a search warrant at defendant's home. Defendant moved to suppress the evidence and dismiss the charges on the ground that the facts stated in the affidavit in support of the warrant failed to establish probable cause to search.

In reviewing a motion to suppress evidence, this Court reviews the trial court's factual findings for clear error but reviews its ultimate decision de novo. *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 by *People v Wager*, 460 Mich 118, 123-124 (1999).

Issuance of a search warrant must be based upon probable cause. MCL 780.651(1). "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). "A magistrate can consider

only the information in the affidavit made before him 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 search warrant and underlying affidavit are to be read in a commonsense and realistic manner. *Russo, supra* at 604.

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).

The affidavit contained the affiant officer’s own observations plus a statement made to him by an unknown woman. That the woman spoke with personal knowledge can be inferred from the facts provided, such as the identity of the house where she bought the marijuana and by the particularized description of the person from whom she bought the substance. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). While an assessment of credibility may be based on a statement against penal interest, the woman’s statement that she bought marijuana was, in itself, insufficient to establish credibility. *People v Gleason*, 122 Mich App 482, 491-492 n 8; 333 NW2d 85 (1983).

However, the affidavit in this case provided information in addition to the woman’s statement. The affiant witnessed the woman visit the house for a short time, conduct which, in his experience, was indicative of narcotics trafficking, and confronted her before she made any stops, which indicated that she did not obtain the marijuana elsewhere. The affiant, as a police officer, is presumptively reliable. *People v Powell*, 201 Mich App 516, 523; 506 NW2d 894 (1993). Thus, the information supplied to the affiant by the woman was properly considered in determining probable cause.

In addition to the woman’s drug buy, the affiant witnessed four other persons visit the house briefly within a short period of time. Such conduct was similar to that of the woman who admitted buying marijuana at the house and was, in the affiant’s experience, generally indicative of drug trafficking. An officer’s experience is relevant to the establishment of probable cause. *People v Ulman*, 244 Mich App 500, 509; 625 NW2d 429 (2001). The affidavit, when read in a commonsense and realistic manner, was sufficient to support a finding of probable cause and thus the trial court erred in ruling otherwise.

We note that defendant argues on appeal that the information contained in the warrant was stale. Defendant did not raise this issue below. Because appellate review is limited to issues actually decided by the trial court and the court was never called upon to rule on the issue, the issue need not be addressed. *People v Evola*, 202 Mich App 178, 180; 507 NW2d 815 (1993).

Reversed and remanded. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski