

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

ADELBERT L. MARTIN,

Defendant-Appellee.

UNPUBLISHED

November 25, 2003

No. 241248

Wayne Circuit Court

LC No. 02-003273

Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to suppress the evidence and dismissing the case. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with possession of marijuana with intent to deliver, MCL 333.7401(2)(d)(iii). The marijuana was seized during a search of defendant's home pursuant to a warrant. The affidavit in support of the warrant was made by Ceiere Campbell, a Detroit narcotics officer. Campbell stated that s/he met with "a credible and reliable" unnamed informant, who was "familiar with all types of narcotics" and had provided information in the past that resulted in arrests and convictions.

On February 5, 2002, Campbell had the informant attempt to engage in a controlled buy with secret service funds. After going to the target house, the informant reported that the seller told him "to come back with someone he knew and he would sell marijuana to the" informant. Campbell then conducted surveillance of the residence. During a thirty-minute period, five people walked up to the seller, who was standing in the driveway by the side door. They would "perform a hand to hand exchange of small palm sized objects" and leave. Campbell believed such activity, coupled with the information provided by the informant, to be "consistent with ongoing illegal narcotics trafficking." Campbell also stated that in his/her experience, illegal firearms were often found in conjunction with drugs.

Defendant filed a motion to suppress, asserting that the affidavit was insufficient to create probable cause for the search. The court agreed and ordered that the results of the search warrant be suppressed.

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 in part on other grounds by *People v Hawkins*, 468 Mich 488, 502, 511; 668 NW2d 602 (2003), and by *People v Wager*, 460 Mich 118, 123-124; 594 NW2d 487 (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 or not 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). A search warrant may be issued where information provided by an informant is corroborated by independent police investigation. *People v Levine*, 461 Mich 172, 177-178, 185; 600 NW2d 622 (1999); *People v Harris*, 191 Mich App 422, 425-426; 479 NW2d 6 (1991).

Whether the informant had prior personal knowledge of narcotics trafficking at defendant's house is irrelevant because the police did not obtain the warrant based solely on the informant's tip. Rather, Officer Campbell undertook an investigation on the basis of the informant's information and it was the result of that investigation that provided the basis for the warrant. Thus, the issue is whether the tip as corroborated and supplemented by Campbell's further investigation provided sufficient probable cause. *Levine*, *supra* at 177-178. The affidavit showed that the informant had provided information in the past leading to arrests and convictions. That showed that his/her information was reliable. The affidavit showed that the informant attempted to make a controlled buy at the target house. The informant spoke to a person identified as "the seller," observed the seller holding a baggie of what appeared to contain marijuana, and was told by the seller that the seller would sell him marijuana if he returned with someone known to the seller. That showed that the informant spoke with personal knowledge. Although the affidavit did not state how the informant knew that the substance in the seller's baggie was marijuana, the magistrate could reasonably infer that the informant could identify the substance as marijuana from the information that he was familiar with all types of narcotics and had assisted the police in other narcotics investigations. *People v Goins*, 164 Mich App 559, 561; 417 NW2d 499 (1987). Although the police did not obtain any marijuana as a result of the attempted controlled buy, Campbell observed conduct between the seller and other persons that

was indicative of narcotics 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 apparent narcotics sales, coupled with the seller's possession of what appeared to be marijuana and the seller's statement that he had marijuana for sale, was sufficient to establish probable cause for issuance of the warrant and the trial court erred in concluding otherwise.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly