

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KENNETH DARDEN,

Defendant-Appellee.

UNPUBLISHED

June 3, 2004

No. 244569

Wayne Circuit Court

LC No. 02-005093-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RONALD REASON,

Defendant-Appellee.

No. 244587

Wayne Circuit Court

LC No. 02-005093-02

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the orders granting defendants' motions to suppress and dismissing charges against them. We reverse. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Defendants were charged with possession with intent to deliver between 225 and 650 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver marijuana, MCL 333.7401(2)(a)(ii). Their motion to suppress evidence seized under a search warrant was granted by the circuit court.

A trial court's findings of fact regarding a motion to suppress are reviewed for clear error. *People v Sobczak-Obetts*, 463 Mich 687, 694; 625 NW2d 764 (2001). Questions of law relevant to a motion to suppress are reviewed de novo. *People v Hamilton*, 465 Mich 526, 529; 638 NW2d 92 (2002).

A search warrant and the underlying affidavit are to be read in a common sense and realistic manner. *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992). Affording deference to the magistrate's decision requires that the reviewing court ensure that there is a substantial basis for the magistrate's conclusion that there is a fair probability that contraband or evidence of a crime will be found at a particular place. *Id.* Probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct is in the stated place to be searched. *Id.*, 606-607.

The affidavit in support of the warrant stated that the affiant met with a credible and reliable informant regarding storage and sales of narcotics from the premises. The informant had provided information to police on over eight occasions, resulting in over eight controlled substances arrests and over eight convictions. The informant had been inside the house and observed large amounts of suspected heroin and cocaine, and that the subject stored and sold narcotics at that location. The affiant conducted surveillance, and observed the seller leaving and entering the house with a key. He saw at least five persons arrive at the house in a 20 minute period, enter, stay a short time, and then leave. Affiant believed that these observations were consistent with ongoing narcotic activity.

The circuit court failed to give the appropriate deference to the magistrate's decision. The affidavit was based on information provided by an informant who had provided reliable information in the past. The officer corroborated the information in observing activity that was typical of drug trafficking. A reasonably cautious person would be justified in concluding that evidence of criminal conduct would be found on the premises. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992).

Reversed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter