

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMALL MARCUS MOBLEY,

Defendant-Appellant.

UNPUBLISHED

June 17, 2004

No. 246020

Wayne Circuit Court

LC No. 02-003526-01

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that the trial court erroneously denied his motion to suppress based on the lack of evidence supporting the magistrate's finding of probable cause. 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 trial court properly disregarded disputed information, and reviewed the warrant based on the remainder of the affidavit. *People v Reid*, 420 Mich 326, 336; 362 NW2d 655 (1984). The remaining portion of the affidavit contained information provided by a confidential informant. The affidavit stated that the informant was credible and reliable, had made statements against his or her own interest, and had provided true information about drug trafficking on at least five occasions. The informant stated that he or she was inside the subject house where he or she observed a large quantity of marijuana in defendant's possession.

The informant's statements, supported by his or her past reliability, provided a substantial basis for the magistrate to conclude that there was a fair probability that marijuana would be found on the premises. The probable cause inquiry looks to whether the items sought will be

found at the place to be searched at the time the warrant is issued. *People v Sobczak-Obetts*, 253 Mich App 97, 108; 654 NW2d 337 (2002). Time is weighed and balanced in light of other variables, such as whether the crime is a single instance or an ongoing pattern. *Id.* Where the informant observed a large quantity of marijuana, there was support for a finding that some of the substance would be present several days after the observation.

Affirmed.

/s/ Janet T. Neff

/s/ Brian K. Zahra

/s/ Christopher M. Murray