

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH MAURICE COLLINS,

Defendant-Appellant.

UNPUBLISHED

November 14, 2006

No. 265464

Wayne Circuit Court

LC No. 05-004422-01

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions of receiving or concealing stolen property, MCL 750.535(3)(a), five counts of delivery of a controlled substance, MCL 333.7401, possession of marijuana, MCL 333.7403(2)(d), possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and unlawful possession of prescription forms, MCL 333.7403(2)(e). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested following a search of his residence pursuant to a search warrant. Police officers recovered approximately 5,000 prescription medication tablets and pills of various types, a small amount of marijuana, plastic bags, scales, and several firearms. The investigating officer testified that defendant admitted that he had taken the pills from a clinic where he worked, and that he supplied them to people in the neighborhood who did not have insurance.

Defendant first argues that the affidavit supporting the search warrant did not contain sufficient information to support a finding of probable cause because the attesting officer's confidential informant did not personally witness defendant transfer contraband to an "unwitting friend" in defendant's home. We review a trial court's findings of fact regarding a motion to suppress evidence for clear error, and the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

Where a search warrant affidavit is prepared on the basis of information provided to the affiant by an unnamed person, it must provide sufficient facts from which a magistrate could find that the information supplied was based on personal knowledge, and that either the unnamed person was credible or the information was reliable. MCL 780.653; *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737; *People v Poole*, 218 Mich App 702, 706; 555 NW2d 485

(1996). In reviewing a magistrate's decision to issue a search warrant, this Court evaluates the search warrant and underlying affidavit in a common sense and realistic manner. *Poole, supra* at 705. We then determine "whether a reasonably cautious person could have concluded, under the totality of the circumstances, that there was a substantial basis for the magistrate's finding of probable cause." *Id.*, citing *People v Sloan*, 450 Mich 160, 168; 538 NW2d 380 (1995); *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992).

In the instant case, the police officer affiant stated that he had received information from a reliable confidential source that an individual known as "Doc" was selling analogue pills from his residence. The informant had previously purchased pills from Doc using a "mutual unwitting friend" to make the actual purchases. The officer averred that the informant had provided reliable information in the past by conducting several controlled purchases of narcotics that had led to six arrests. The officer listed information provided by the informant that the officer independently verified. Various record checks revealed that the residence was owned by defendant. The officer also observed a Cadillac Deville parked in the residence driveway with the personalized license plate, DOCKC, which was registered to defendant.¹

The officer outlined a course of investigation involving four controlled purchases involving the officer, the informant, and the unwitting friend. In each instance, the officer met with the informant at a prearranged location, searched the informant and his vehicle for any controlled substances or other contraband, and provided the informant with pre-recorded purchase funds. The informant drove to a location where the unwitting friend was waiting. The officer followed the informant and the unwitting friend to defendant's residence. The informant waited in the car, while the unwitting friend entered the front door of the home. A short time later, the officer observed the friend leave the home and enter the informant's car. The informant dropped off the unwitting friend at a prearranged location. The officer then met with the informant where he turned over analogue tablets that had been purchased from defendant. According to the officer, the last controlled purchase had occurred within 48 hours of the preparation of the warrant affidavit.

Defendant maintains that the warrant was not supported by sufficient probable cause because the actual purchase of the cocaine was made through an unwitting accomplice. However, both our Supreme Court and this Court have rejected this argument. *People v Nelson*, 443 Mich 626, 633 n 11; 505 NW2d 266 (1993); *Echavarria, supra* at 367-368. After reviewing the affidavit in the instant case, we hold that it contained sufficient information from which the magistrate could conclude that the informant was credible and that the information supplied was based on the informant's personal knowledge. The affiant stated that the informant's prior tips had led to a number of previous controlled purchases and arrests. Further, the affiant had independently verified the information the informant had given concerning defendant's identity. We conclude that this information supplied sufficient evidence from which the magistrate could determine that the informant was credible. We also conclude that sufficient information was presented to support a finding that the information about drug dealing at defendant's residence was based on the informant's personal knowledge. While the pill purchase was made "through"

¹ This personalized plate identified defendant's street name and his initials.

the unwitting participant, the affidavit indicates that the informant was involved in the criminal transaction. *Nelson, supra* at 633 n 11.

Defendant also argues that, even if the information contained in the affidavit presented evidence of past drug transactions, the information was “stale” by the time the police obtained the warrant and searched defendant’s home. We disagree.

When deciding the reasonableness of whether contraband will be found, it is not assumed that evidence of a crime will remain indefinitely in a given place. *Russo, supra* at 605. A warrant becomes “stale” if too much time passes from observation of the contraband to the issuance of the search warrant. *Id.* The length of time that may transpire depends on the circumstances of each case. *Id.* at 605-606.

Defendant focuses on the length of time between the last controlled purchase and the execution of the warrant to argue that the warrant was stale. Defendant correctly observes that this Court has held that an affidavit alleging a *single* sale of marijuana became stale after three days. *People v David*, 119 Mich App 289, 296; 326 NW2d 485 (1982). However, the repeated nature of the transactions between defendant and the unwitting participant here suggests that defendant was trafficking in prescription medication on something other than a casual basis. It is reasonable to infer, within a probable cause standard, that there would continue to be evidence of defendant’s prescription drug delivery business in the home. The delay did not render the warrant stale.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio