

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAMON LAMAR LOVE,

Defendant-Appellee.

UNPUBLISHED

September 11, 2007

No. 271032

Wayne Circuit Court

LC No. 06-003258-01

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

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing a charge of possession with intent to deliver 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(i), following the grant of defendant's motion to suppress evidence. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

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 probable cause exists to issue a search warrant." *People v Sundling*, 153 Mich App 277, 285-286; 395 NW2d 308 (1986). 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 search warrant and underlying affidavit are to be read in a commonsense and realistic manner. *Russo, supra* at 604.

The affidavit included information from a confidential informant (CI). The trial court determined that the affidavit complied with MCL 780.653(b). The CI stated that a person of a certain description was selling cocaine from a particular house. The affiant then conducted an independent investigation and saw what appeared to be two sales of narcotics: a visitor came to the door, spoke to the person described by the CI, and, after waiting a few minutes, exchanged money for something else and left. The affiant stated that such actions were consistent with 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). Further, an officer's observation of drug trafficking activity during surveillance is sufficient to support a search warrant. *People v Griffin*, 235 Mich App 27, 42-43; 597 NW2d 176 (1999), overruled in part on other grounds by *People v Thompson*, 477 Mich 146, 148; 730 NW2d 708 (2007). Although the affidavit did not conclusively establish that the visitors obtained cocaine from the seller, "the affidavit need not prove anything." It only has to provide a substantial basis for concluding that there is a fair probability that contraband or evidence of a crime will be found in the place stated. *People v Whitfield*, 461 Mich 441, 445-446; 607 NW2d 61 (2000) (emphasis in original). Evidence from an informant that a particular person was selling cocaine from a particular place, plus evidence of apparent narcotic transactions by that person at that place, provide a substantial basis for concluding that cocaine would be found at the place to be searched. *People v Mario Perry*, 463 Mich 927; 620 NW2d 308 (2000). Therefore, the trial court erred in its determination that the affidavit was insufficient to establish probable cause.

Reversed and remanded for reinstatement of the charge. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder