

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT LAMAR LEE,

Defendant-Appellee.

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UNPUBLISHED

November 13, 2008

No. 280944

Wayne Circuit Court

LC No. 07-010439-01

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver less than five kilograms of 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, following the execution of a search warrant at his home.<sup>1</sup> The trial court determined that the affidavit in support of the warrant was insufficient to establish probable cause to search and, accordingly, granted defendant's motion to suppress the evidence and dismissed the charges. The prosecutor appeals as of right. We reverse and remand. This appeal has been 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). Rather, 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

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<sup>1</sup> Two search warrants were issued in total. The first warrant authorized a search for documents and the second warrant authorized a search for narcotics. Probable cause for the second warrant was dependant upon evidence found in the home upon execution of the first warrant. Quashing the first warrant necessarily quashes the second warrant.

part on other grounds *People v Hawkins*, 468 Mich 488, 502, 511; 668 NW2d 602 (2003), and *People v Wager*, 460 Mich 118, 123-124; 594 NW2d 487 (1999).

Issuance of a search warrant must be based on 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 named, the affidavit must contain affirmative allegations “from which the magistrate may conclude that the person spoke with personal knowledge of the information” provided. MCL 780.653(a). 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).

“In general, the requirement that the informant have personal knowledge seeks to eliminate the use of rumors or reputations to form the basis for the circumstances requiring a search.” *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992). If the informant is not named, the reliability of his or her information can be demonstrated by independent police investigation that corroborates the information. *People v Levine*, 461 Mich 172, 184-185; 600 NW2d 622 (1999). It is not necessary that the police corroborate the specific allegations of criminal activity. *Id.* at 182-184. Further, it is not mandated that the police independently verify the information because reliability of the information is but one of two bases for accepting hearsay information, provided personal knowledge is also demonstrated; credibility of the informant is an independent basis for accepting hearsay information. MCL 780.653(b). That the informant has a course of performance in which he or she has supplied reliable information is indicative of credibility. *People v Sherbine*, 421 Mich 502, 510 n 13; 364 NW2d 658 (1984), overruled in part on other grounds *Hawkins, supra* at 502.

In this case, the purpose of the warrant was to search for documentation linking defendant to a large amount of marijuana stolen from a car wash prior to a drug raid, and to drug trafficking. The affiant had information that other officers had obtained from unnamed sources.<sup>2</sup> All three informants stated that defendant was a marijuana dealer. They identified him by name and stated where he lived; confidential informant (CI) #144 gave defendant’s nickname as Rolo. The police confirmed that there was a person named Robert “Rolo” Lee who lived at 35842 Park

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<sup>2</sup> “When one police officer receives information from a fellow officer, the law assumes the source is credible.” *People v Mackey*, 121 Mich App 748, 754; 329 NW2d 476 (1982). “Where the information is then presented to a magistrate in an application for a search warrant, the magistrate, too, may consider the source to be credible.” *Id.*, citing *People v Fuller*, 106 Mich App 263, 266; 307 NW2d 467 (1981).

Place. Lee had been investigated for drug dealing in 2003, and a search of his home produced two pounds of marijuana, an amount far exceeding that normally associated with purely personal use.<sup>3</sup> “[C]riminal history, combined with other factors, can support a finding of reasonable suspicion or probable cause.” *United States v Artez*, 389 F3d 1106, 1114 (CA 10, 2004). Further, reports of the same information from multiple sources provides additional corroboration. *Id.* The anonymous tipster and CI #144 stated that defendant was associated with Bryant Phillips whose nickname was “Co-kee,” that the two men worked together in the drug trade, that defendant had bought the marijuana seized from the car wash (the tipster gave a price of over \$1 million, a sum which suggested that a large amount of marijuana was involved), and that defendant had acquired his current home from Phillips.<sup>4</sup> The tipster stated that the sale took place in December 2005, and added that after the sale, Phillips moved away from Romulus. The police confirmed that there was a person named Bryant “Co-kee” Phillips. He had recently traveled to Mexico, a known source of illegal drugs, and was being investigated for drug trafficking. They confirmed that more than a ton of marijuana had been seized from the car wash. And they confirmed that Phillips had sold the Park Place house to defendant at the time stated, which was evidence of an association between the two men, and that after he sold the house, Phillips moved to Ypsilanti.

We conclude that the information in the affidavit was sufficient to warrant a finding of probable cause to believe that records of drug trafficking would be found in defendant’s house. The various informants spoke with personal knowledge, as indicated by the particularized information they provided, such as defendant’s association with Phillips, the names and nicknames of both men, defendant’s address, when and from whom defendant purchased the house, Phillips’s departure from Romulus, and the seizure of marijuana from the car wash. The police confirmed all that information. They also determined that defendant had previously been investigated for drug activity and that two pounds of marijuana was found at his house. They also determined that Phillips had recently been to Mexico and was being investigated for drug activity. Such investigation established that the information provided by the sources was reliable and created probable cause to believe that defendant was involved in trafficking large amounts of marijuana. Such activity would necessarily involve the keeping of records and personal records are likely to be kept in a person’s home. Therefore, the trial court erred in finding that the affidavit failed to establish probable cause for the search.

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<sup>3</sup> The fact that the affiant apparently reported in error that the 2003 case was still open as opposed to having been prosecuted to judgment was not material to a finding of probable cause. Further, defendant failed to show that the affiant knew the actual status of the case and misrepresented that status intentionally or with reckless disregard for the truth. See *Stumpf*, *supra* at 224.

<sup>4</sup> Defendant asserts that the affiant omitted that defendant had obtained financing secured by a mortgage. Such information was not material, nor did it disprove the sources’ reports that the sale of the house was used to satisfy a drug debt owed by Phillips to defendant or that defendant used drug proceeds to make the purchase. Further, defendant failed to show that the affiant knew that defendant had issued a mortgage to a lender and omitted that fact intentionally or with reckless disregard for the truth.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering  
/s/ Stephen L. Borrello  
/s/ Alton T. Davis