S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED April 10, 2012
v	No. 302017 Wayne Circuit Court
JESSE LAWERENCE HOLT, a/k/a JESSE LAWRENCE HOLT, Defendant-Appellee.	LC No. 10-007922-FH

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

The prosecution appeals by right from a circuit court order dismissing charges of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(*v*), possession of marijuana, MCL 333.7403(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b(1), after the court granted defendant's motion to suppress the evidence. We reverse and remand.

The prosecution charged defendant with the above offenses after the execution of a search warrant at defendant's residence. The affidavit for the warrant stated that after receiving unofficial complaints about distribution of controlled substances at the residence, the affiant monitored activity at the residence for 45 minutes. During that time, the affiant observed a man leave the residence with a black bag. The following day, a police canine handler with a drug dog went to the front door of the residence, and the dog indicated the presence of narcotics. Police subsequently obtained and executed the warrant and seized evidence from defendant's residence.

Defendant moved to suppress the evidence, arguing that the use of a drug dog at a residence without a legitimate basis is improper, and without the dog's positive response, the remainder of the information in the affidavit did not provide probable cause for issuance of a warrant. Although the facts of this case are very similar to those in *People v Jones*, 279 Mich App 86; 755 NW2d 224 (2008), in which this Court reversed an order granting the defendant's motion to suppress evidence and dismissing the case, the circuit court declined to follow *Jones*. The circuit court determined that the majority opinion was logically flawed, contradictory, and confusing, and that the dissenting opinion represented the better view.

We review de novo a circuit court's ruling on a motion to suppress. *People v Marcus Davis,* 250 Mich App 357, 362; 649 NW2d 94 (2002). However, we give deference to the

magistrate's determination that probable cause existed to issue a search warrant. *People v Keller*, 479 Mich 467, 474, 477; 739 NW2d 505 (2007). "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), quoting *People v Russo,* 439 Mich 584, 604; 487 NW2d 698 (1992). The search warrant and underlying affidavit "are to be read in a common-sense and realistic manner." *Russo*, 439 Mich at 604.

In this case, the circuit court erred by failing to follow *Jones*, 279 Mich App 86. In *Jones*, the police obtained a search warrant after a trained drug dog "gave a positive indication for narcotics at the front door" of the defendant's residence. *Id*. at 88. The circuit court suppressed the evidence from the search warrant and dismissed the charges against the defendant. *Id*. at 90. On appeal, this Court analyzed whether "the canine sniff, which provided the probable cause for the issuance of the search warrant, was obtained in violation of the rights guaranteed by the Fourth Amendment of the United States Constitution." *Id.* The Court concluded that "a canine sniff is not a search within the meaning of the Fourth Amendment as long as the sniffing canine is legally present at its vantage point when its sense is aroused." *Id.* at 93. The Court went on to note that the dog was legally present at the front door of the defendant's house. *Id*. at 94. Thus, the Court reversed the circuit court's suppression of the evidence. *Id.* at 94-95, 98-99.

A circuit court judge is required to follow controlling precedent established by a published decision of this Court "until a contrary result is reached by this Court or the Supreme Court takes other action." *Holland Home v Grand Rapids*, 219 Mich App 384, 394; 557 NW2d 118 (1996); see also *People v Hunt*, 171 Mich App 174, 180; 429 NW2d 824 (1988). *Jones* is controlling precedent for this case. Here, as in *Jones*, a trained drug dog signaled that narcotics were present in defendant's residence. 279 Mich App at 88. Further, just as there was no evidence that there were any obstructions to the front door in *Jones*, there is no evidence here that there were obstructions to the front door of defendant's residence. *Id* at 95. Because the results of the canine sniff in this case provided probable cause for the issuance of the warrant, the circuit court had no basis for granting defendant's motion to suppress.

Defendant contends that the allegation regarding the results of the canine sniff were insufficient to establish probable cause because the affidavit did not specifically allege the dog was a trained narcotics dog or was certified by objective, scientifically validated criteria. We disagree. There is authority holding that an affidavit need not include a complete history of a drug dog's reliability. *United States v Kennedy*, 131 F3d 1371, 1377 (CA 10, 1997), cert den 525 US 863; 119 S Ct 151; 142 L Ed 2d 123 (1998); accord, *United States v Sundby*, 186 F3d 873, 876 (CA 8, 1999); *United States v Berry*, 90 F3d 148, 153 (CA 6, 1996). Even if we were to agree with defendant's position, the good-faith exception to the warrant requirement would preclude suppression of the evidence because the dog's alert outside defendant's door created probable cause to believe that there was contraband on the premises. In light of authority holding that a detailed history of the dog's training and reliability need not be included in the affidavit, the police reliance on the warrant was not objectively unreasonable. See *People v Goldston*, 470 Mich 523, 531, 542-543; 682 NW2d 479 (2004) (adopting the good-faith exception to the exclusionary rule).

Defendant also argues that even if the affidavit was sufficient to establish probable cause for the search warrant under the Fourth Amendment, the affidavit was not sufficient to establish probable cause for the search warrant under Michigan's counterpart to the Fourth Amendment, Const 1963, art 1, § 11. The crux of the argument appears to be that even if a canine sniff outside a private home is not a search under the Fourth Amendment, it should constitute a search under the Michigan Constitution. However, "art 1, § 11 is to be construed to provide the same protection as that secured by the Fourth Amendment, absent 'compelling reason' to impose a different interpretation." *People v Collins*, 438 Mich 8, 25; 475 NW2d 684 (1991). Defendant cites an Arizona case as persuasive precedent for interpreting art 1, § 11 differently than the Fourth Amendment. See *State v Guillen*, 222 Ariz 81, 90; 213 P3d 230 (Ariz Ct App, 2009), vacated on other grounds 223 Ariz 314, 319 (Ariz, 2010). However, Arizona's constitutional provision is significantly different than the Fourth Amendment, *id.* at 86, while the first two sentences of Michigan's constitutional provision are substantially similar to the Fourth Amendment. Therefore, defendant has not shown a compelling reason to interpret art 1, § 11 any differently than the Fourth Amendment.

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

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck