

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 22, 2011

v

ELISHA TILLMAN, II,

No. 302169
Saginaw Circuit Court
LC No. 10-033662-FH

Defendant-Appellant.

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

SHAPIRO, P.J. (*concurring*).

I do not agree that the magistrate had a proper basis on which to execute a search warrant regarding the defendant's address at 2512 Lynwood. There was no evidence of defendant's participation in any drug sales. There was also no evidence that drugs were being maintained in her home. A known informant provided credible information that several other houses included in the warrant were being used for drug sales, but defendant's home was not one of them. The only evidence relevant to defendant's residence was as follows: On one occasion, two people were observed leaving one of the suspected drug houses and driving a particular vehicle to another house which also had not been named by the informant as a drug house. The next day, the same vehicle was seen leaving the first house and was stopped by officers who searched it. No drugs were observed. During that stop, the police learned that the vehicle was registered to one of its occupants (not defendant) with a listed address of 2512 Lynwood Street. The warrant further provided that the officers received an anonymous tip around the same time that drug sales were taking place at the Lynwood Street address.

An anonymous tip may only provide probable cause for a warrant if there is independent corroboration of relevant facts, or sometimes if the tip is sufficiently detailed. *People v Perreault*, 486 Mich 914, 915; 781 NW2d 796 (2010). In this case, the tip did not provide any details beyond the bare allegation of drug sales, and this information was not corroborated in any way. The only other evidence relevant to the Lynwood address is the use on two occasions of a vehicle registered to defendant's address by a person who had gone to a suspected drug house which had yet to be searched. However, when the vehicle was stopped, it did not contain any drugs. Thus, I do not believe that the facts stated in the affidavit for the search warrant rise to the level of probable cause for a search at defendant's address.

However, this Court is bound by the decisions in *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984) and *People v Goldston*, 470 Mich 523; 682 NW2d 479 (2004), which provide that the exclusionary rule does not apply when police officers act in reasonable, good faith reliance on a magistrate's probable cause determination, even if a reviewing court later determines that the magistrate's determination was in error. *Goldston*, 470 Mich at 531, 543. There is no evidence of improper conduct by the officers in presenting the warrant or supporting affidavit and their reliance on the warrant was objectively reasonable, so we cannot apply the exclusionary rule in this case.

/s/ Douglas B. Shapiro