

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
June 13, 2013

v

RENEE WILLIAMS,

Defendant-Appellee.

No. 310904
Oakland Circuit Court
LC No. 2011-236211-FC

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

The prosecution appeals as of right the trial court’s order granting Renee Williams’s motion to suppress evidence and dismissing the charges. Williams was charged with possession with intent to deliver 1,000 or more grams of cocaine,¹ and possession of a firearm during the commission of a felony (felony-firearm).² We reverse and remand for proceedings consistent with this opinion.

The prosecution argues that the trial court erred in granting Williams’s motion to suppress evidence seized pursuant to a search warrant and dismissing the charges. Specifically, the prosecution contends that the affidavit provided sufficient information to establish probable cause for the issuance of the search warrant, and that, even if the search warrant lacked probable cause, the good-faith exception to the exclusionary rule applied. We agree. This court reviews a trial court’s findings of fact on a motion to suppress for clear error, but reviews the ultimate decision on the motion de novo.³

A search warrant may only be issued on a showing of probable cause.⁴ “Probable cause for issuance of a search warrant exists if there is a substantial basis for inferring a fair probability

¹ MCL 333.7401(2)(a)(i).

² MCL 750.227b.

³ *People v Brown*, 297 Mich App 670, 674; 825 NW2d 91 (2012).

⁴ US Const, Am IV; Const 1963, art 1, § 11; MCL 780.651(1).

that contraband or evidence of a crime exists in the location to be searched.”⁵ “Probable cause must be based on facts presented to the issuing magistrate by oath or affirmation, such as by affidavit.”⁶ “When probable cause is averred in an affidavit, the affidavit must contain facts within the knowledge of the affiant rather than mere conclusions or beliefs.”⁷ “The affiant may not draw his . . . own inferences, but must state the matters that justify the drawing of inferences.”⁸ “[T]he affiant’s experience [however] is relevant to the establishment of probable cause.”⁹ MCL 780.653 provides, in relevant part:

The magistrate’s finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:

* * *

(b) If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

“When reviewing a magistrate’s decision to issue a search warrant, this Court must examine the search warrant and underlying affidavit in a common-sense and realistic manner.”¹⁰ This Court must then determine whether a “reasonably cautious person,” under the totality of the circumstances, “could have concluded that there was a substantial basis for the magistrate’s finding of probable cause.”¹¹

The trial court erred in concluding that the affidavit accompanying the search warrant failed to provide probable cause to support the issuance of the search warrant. The affidavit contained facts within Officer Gregory Tourville, Jr.’s and the unnamed person’s knowledge. The affidavit indicated that Tourville conducted surveillance of the unnamed person and followed the person to an apartment building. Tourville noted that he observed the unnamed person exit the building “carrying a weighted object under his/her shirt.” Tourville followed the unnamed person and observed the unnamed person exit their vehicle “carrying a white shopping bag that contained a weighted object.” Tourville and others executed a search warrant at the location where the unnamed individual was and seized “a white shopping bag that contained a

⁵ *People v Malone*, 287 Mich App 648, 663; 792 NW2d 7 (2010).

⁶ *Brown*, 297 Mich App at 675.

⁷ *People v Waclawski*, 286 Mich App 634, 698; 780 NW2d 321 (2009).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Malone*, 287 Mich App at 663.

¹¹ *Id.*

square package that contained 1022 grams of cocaine.” After being interviewed, the unnamed individual stated that he/she went to 16500 North Park, apartment 1502, in the city of Southfield and purchased the cocaine from Williams, who was described as a black female in her 40’s. Tourville then conducted a LEIN check and found that Williams was registered at the address for the apartment complex, and matched the physical description provided by the unnamed individual. Thereafter, a search warrant for the apartment was obtained and executed, and cocaine and a firearm were recovered. Based on the above, Tourville presented sufficient information so that the magistrate could conclude that the unnamed person spoke with personal knowledge and was either credible or the information was reliable.

The information contained in the affidavit additionally established that there was a fair probability that the items sought would be found in Williams’s apartment. Williams asserts that there was no connection between her and the cocaine found in the unnamed individual’s possession. The unnamed individual, however, indicated that he/she went to a specific apartment and purchased cocaine from Williams. Tourville corroborated the unnamed person’s statement in part when he confirmed that Williams was registered to the address for the apartment complex from which the cocaine was allegedly purchased, and that Williams matched the description of the person who allegedly sold the unnamed person cocaine. Thus, affording great deference to the magistrate’s determination of probable cause, a reasonably cautious person, under the totality of the circumstances, could conclude that there was a substantial basis for the magistrate’s finding.¹²

Assuming arguendo that the affidavit lacked probable cause to issue the search warrant, the evidence should not have been suppressed because the good-faith exception to the exclusionary rule applied. “The purpose of the exclusionary rule is to deter police misconduct.”¹³ Under the good-faith exception to the exclusionary rule, which is recognized in Michigan, suppression is not required where “[t]he police officers’ reliance on the district judge’s determination of probable cause and on the technical sufficiency of the search warrant was objectively reasonable.”¹⁴ On the other hand, as articulated in *US v Leon*,¹⁵ there are four instances in which the good-faith exception to the exclusionary rule does not apply, which include when: (1) “the magistrate . . . was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth,” (2) “the issuing magistrate wholly abandoned his judicial role,” such that “no reasonably well trained officer should rely on the warrant,” (3) an officer relies on a warrant “based on an affidavit ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,’” or (4) a warrant that is “so facially deficient—i.e., in failing to

¹² *Id.*; *People v Keller*, 479 Mich 467, 474; 739 NW2d 505 (2007).

¹³ *People v Goldston*, 470 Mich 523, 526; 682 NW2d 479 (2004).

¹⁴ *Id.* at 541-542.

¹⁵ *US v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984).

particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.”¹⁶

There was no evidence presented, however, of any of the above four circumstances. Contrary to the trial court’s determination, the officers’ reliance on the warrant based on the affidavit was not “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable” because, as explained above, Tourville’s affidavit was much more than a “bare bones” affidavit.¹⁷ Therefore, we find that the evidence instead showed that the officers’ reliance on the search warrant when it was executed was objectively reasonable. Because the officers executed the warrant with a good-faith belief that it was properly issued, the evidence should not have been excluded nor the charges dismissed.

Reversed and remanded for reinstatement of the possession with intent to deliver 1,000 or more grams of cocaine and felony-firearm charges. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood

¹⁶ *Id.* at 923.

¹⁷ *Id.* at 923, 926.