

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT BYNUM,

Defendant-Appellant.

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UNPUBLISHED

May 17, 1996

No. 187972, 188223

LC No. 95-0042-FH

95-0024-FH

Before: White, P.J., and Sawyer and R.M. Pajtas,\* JJ.

PER CURIAM.

Defendant pleaded guilty of possession of 50 to 225 grams of cocaine, MCL 333.7403(2)a(iii); MSA 14.15(7403), and, in a separate case, to possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401). Pursuant to a conditional plea agreement, the prosecution agreed to recommend sentences of ten to twenty years, consecutive to 2 ½ to 20 years, respectively, and drop other charges. Defendant's pleas were conditioned on preserving the right to appeal the court's rulings on pretrial motions to quash the search warrant and suppress evidence. Defendant was sentenced to consecutive sentences of ten to twenty years and 2 ½ to 20 years, and appeals, arguing the circuit court erred in finding the search warrant was supported by probable cause and denying his motion to quash and suppress, and that suppression was also warranted on the independent ground that the search violated the "knock and announce" statute, MCL 780.656; MSA 28.1259(6). We affirm.

I

Probable cause to search must exist at the time the search warrant is issued, and probable cause exists when a person of reasonable caution would be justified in concluding that evidence of criminal conduct is in the stated place to be searched. *People v Russo*, 439 Mich 584, 606-607; 487 NW2d 698 (1992). Appellate scrutiny of a magistrate's decision whether facts in a search warrant affidavit are

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\* Circuit judge, sitting on the Court of Appeals by assignment.

sufficient to establish probable cause involves neither de novo review nor application of an abuse of discretion standard. Rather, the preference for warrants set forth in *Illinois v Gates*, 462 US 213; 103 S Ct 2317; 76 L Ed 2d 527 (1983), requires that the reviewing court ask only whether a reasonably cautious person could have concluded that there was a substantial basis for the finding of probable cause. 439 Mich at 603. In doing so, a search warrant and the underlying affidavit are to be read in a common-sense and realistic manner. *Russo*, 439 Mich at 604. The *Russo* Court also noted and joined the United States Supreme Court's rejection in *Gates* of wholesale application of the more probable than not standard for defining probable cause. 439 Mich at 607, 608-609. Affording deference to the magistrate's decision requires that reviewing courts ensure that there is a substantial basis for the magistrate's conclusion that there is a "fair probability" that contraband or evidence of a crime will be found in a particular place. *Id.*, quoting *Gates* 462 US at 238.

The search warrant at issue authorized the search of the south duplex at 3638 Kalamazoo Avenue, SE, a private resident in Grand Rapids. Defendant argues that there was no probable cause to search the residence because there was insufficient evidence linking him to that residence and insufficient evidence linking that address to drug-related activity. We disagree.

The search warrant affidavit was dated December 15, 1994, and stated that the affiant, Officer Charles Ware of the Grand Rapids Police Department, was assigned to the Vice Unit. The affidavit stated that Ware was advised by a reliable and credible informant in May 1994 that defendant was trafficking cocaine in Grand Rapids and would make deliveries to different locations in the city, and that defendant resided at 3638 Kalamazoo Avenue, SE, with his girlfriend, Robin James. Ware conducted surveillance of the residence and defendant on May 5, 1994, and followed defendant to a motor lodge, where defendant stayed about thirty minutes, and then to an area known for drug trafficking, where defendant went to an unknown house. The affidavit further stated that Ware later received a field report dated May 5, 1994, showing that another officer had stopped defendant, and defendant gave as his address 3638 Kalamazoo Avenue, SE. Ware again conducted surveillance of defendant on June 6, 1994, at the Kalamazoo Avenue residence, and observed him leaving in a 1988 Daihatsu gray two-door vehicle. Ware followed defendant to an address known for drug trafficking, which had been the subject of a drug search warrant in October 1992.

The affidavit further stated that Ware had received three Silent Observer reports, on July 19, October 3, and November 12, 1994, which respectively indicated that defendant and his girlfriend, Robin James, were involved in drug sales and possessed guns; that defendant was selling crack cocaine from the dwelling at 3638 Kalamazoo Avenue, SE, in quantities as much as \$2,000 a sale and that defendant possessed and kept guns at that dwelling; and that defendant had picked up six kilograms of cocaine in Detroit and brought the drugs to the Kalamazoo Avenue dwelling, that defendant had weapons, and that defendant stored the drugs at other locations and "hung around" 227 Brown, SE, where he sold drugs.

The affidavit further stated that on December 15, 1994, Ware and another officer conducted surveillance of 438 Pleasant SE for drug activity, and that as a result of that surveillance a traffic stop

was made of a four-door 1994 Nissan Maxima driven by defendant. Defendant fled on foot, shedding his jacket, which officers retrieved and inside of which were found \$578 and twenty pieces of a substance which preliminary testing showed was cocaine weighing approximately ten grams. Defendant was arrested and refused to give an address. The affidavit stated that mail found inside the vehicle, postmarked December 5, 1994, was addressed to defendant and several others at the Kalamazoo address. An Ameritech phone bill receipt in Robin James' name in the amount of \$1,000 was also found, as was a letter addressed to James at 3638 Kalamazoo, dated December 5, 1994. The affidavit further stated that subsequent to defendant's arrest, Ware observed the gray Daihatsu previously driven by defendant in the driveway of the 3638 Kalamazoo Avenue, SE, address.

The affidavit further stated that Ware had checked defendant's criminal history, and that it included convictions for carrying a concealed weapon and possession of a controlled substance, and that based on this information, defendant was believed to be a convicted felon in possession of a firearm.

Pages three and four of the affidavit contain Officer Ware's experience in investigating drug trafficking, and his conclusion that based on the information and his experience and training, there was probable cause to search 3638 Kalamazoo Avenue, SE, to find evidence of drug trafficking.

At the suppression hearing, the circuit court found that the information from the informant and the Silent Observer tips did not supply probable cause, but that the remainder of the search warrant did. After a thorough examination of the affidavit's contents, the court noted:

So, what we have here is a defendant who is seen in town on various occasions, beginning in May of 1994, and connected with 3638 Kalamazoo, Southeast. He's connected with the address by surveillance which places him there coming and going. He is connected with the residence by a statement that he gave to a police officer who stopped him, and a field interrogation report. As of May 5, 1994, Mr. Bynum is linked to that address. June 6, 1994, he's again seen at 3538 Kalamazoo, and he's seen to leave it in a particular described Daihatsu automobile. He is, on both the May date and the June date, seen to go into areas where known drug trafficking goes on. The first into a general neighborhood, the second into a specific address, which has been known as a drug house, and which has been raided on a prior search warrant.

Then we skip forward on December 15, 1994, when the police are conducting the surveillance of another address on Pleasant, for drug activity, they see the defendant leave in a Nissan automobile. He is stopped for a traffic stop, he flees, he drops a jacket. The jacket is found to have 10 grams of cocaine, and \$578 in cash. The vehicle has mail addressed to the defendant at the 3638 Kalamazoo address. And, finally, the Daihatsu if found even then, to be parked at the 3638 Kalamazoo, Southeast address.

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I am constrained of the view that even setting aside the information which is not properly substantiated, namely: the Silent Observer tips and the so-called reliable and credible information, there is plenty of evidence here to support the conclusion that the defendant was using 3638 Kalamazoo as a local address, and residing there, at least situationally, operating out of the address, that he was engaged in narcotics trafficking, and therefore, it was reasonable to assume that records of that trafficking might be found at that address, especially when the records we're talking about, among other things, talk about further phone logs and things of that sort. As already noted, the Affidavit contains reference to a thousand dollar Ameritech bill at the address, indicating somebody was burning up the wires there, and there was a considerable amount of communication coming and going.

Drugs, in the nature of things, cocaine in particular, moves quickly, and seldom sits in any one location for any length of time, however records or documents associated with the process, I think it's described in the Affidavit as residue of the transactions, linger behind and frequently are dealt with in a different fashion. In part, because they have no intrinsic value, like the cocaine does, and in part because, I suspect, that people who leave the trail are not thinking, necessarily, in terms of the trail. They're thinking of the drugs and of the money.

My conclusion is that a common sense reading of this Affidavit would allow a reasonable, and detached, neutral Magistrate to conclude from it that probable cause is properly recited, and the Affidavit being supported by adequate probable cause, I believe the warrant was properly issued.

We agree with the circuit court's reasoning in concluding that a reasonable magistrate could have found a substantial basis that probable cause to search 3638 Kalamazoo Avenue, SE, existed. Thus, the circuit court did not err in denying defendant's motion to quash the warrant and suppress the evidence.

## II

A conditional plea must specify the issue reserved for appeal. MCR 6.301(C)(2); *People v Andrews*, 192 Mich App 706, 707; 481 NW2d 831 (1992). Issues not specified as reserved are waived. *People v Wynn*, 197 Mich App 509, 510; 496 NW2d 799 (1992). As defendant's plea was conditioned only on defendant's right to challenge the court's ruling on the motion to quash the search warrant and suppress evidence based on lack of probable cause, defendant failed to preserve the issue whether the search violated the "knock and announce" statute. MCL 780.656; MSA 28.1259(6). Because defendant failed to raise the issue below, no record was made

regarding whether the officers complied with the “knock and announce” statute or whether there were exigent circumstances. We thus decline to review this issue.

Affirmed.

/s/ Helene N. White  
/s/ David H. Sawyer  
/s/ Richard M. Pajtas