

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELIAS CORTEZ, JR.,

Defendant-Appellant.

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UNPUBLISHED

August 6, 1996

No. 195241

LC No. 92-064689-FH

ON REMAND

Before: Hoekstra, P.J., and Hood and Saad, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of use of a controlled substance, MCL 333.7404(2)(d); MSA 14.15(7404). Because this was a supplemental offense, MCL 333.7413(2); MSA 14.15(7413), defendant was sentenced to 24 months' probation, with the first twelve months to be served in jail. On appeal, defendant challenged the trial court's denial of his motion to suppress evidence and we reversed, finding that the search had exceeded the scope of the warrant. However, our Supreme Court reversed our opinion and issued an order remanding the case for consideration of defendant's remaining issues raised on appeal. *People v Cortez*, 451 Mich 888; 547 NW2d 312 (1996). We now consider defendant's remaining issues and find that none warrant reversal.

Defendant argues for the first time on appeal that the trial court erred in denying his motion to suppress evidence without holding an evidentiary hearing. While defendant is correct that exclusive reliance on preliminary examination transcripts in deciding suppression issues was rejected in *People v Talley*, 410 Mich 378; 301 NW2d 809 (1981), here we conclude that an evidentiary hearing was unnecessary for several reasons. First, the issues raised by defendant were solely legal ones to be resolved by the court and factual disputes were not involved in the resolution of these issues. See *People v Chernowas*, 111 Mich App 1, 3-4 n 2; 314 NW2d 505 (1981). Second, defendant cited extensively from the preliminary examination transcripts in his brief in support of his motion to suppress, and none of the testimony relied upon was disputed by the prosecution. Although not explicitly labeled

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

as such, in our opinion this amounted to a stipulation of facts upon which the trial court was entitled to rely in deciding defendant's motion to suppress. See *People v Armendarez*, 188 Mich App 61, 65; 468 NW2d 893 (1991).

Defendant's other challenge involves the validity of the search warrant. Defendant argues that the warrant was invalid because the affidavit supporting the warrant did not contain factual allegations to support the reliability of the confidential informant. We disagree. Here, the magistrate had a substantial basis for finding probable cause and issuing the warrant as the affidavit for the warrant contained sufficient allegations that the unnamed informant had personal knowledge of the information supplied, and given the informant's participation in a controlled buy which immediately preceded the seeking of the warrant, no further indicia of reliability was required. See *People v Williams*, 139 Mich App 104; 360 NW2d 585 (1984).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Harold Hood

/s/ Henry William Saad