

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSE R. RIVERA,

Defendant-Appellant.

UNPUBLISHED

November 15, 1996

No. 184056

LC No. 93-124647-FH

Before: White, P.J., and Griffin and D. C. Kolenda,* JJ.

PER CURIAM.

Plaintiff appeals as of right an order dismissing the charges against defendant on the basis that the evidence against him was seized after an illegal arrest. We reverse and remand.

Following a preliminary examination, defendant was bound over for trial on the charge of possession with intent to deliver between 50 and 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). Thereafter, defendant moved to suppress the evidence against him and quash the felony information. At an evidentiary hearing, the trial court suppressed the evidence against defendant and dismissed the charge. Apparently, the trial court ruled the cocaine found in the police car where defendant was detained after arrest must be suppressed because the warrant for defendant's arrest was issued without probable cause. In support of its ruling, the trial court stated that the undercover officer handling the case should have researched whether the Jose Rivera whose name was found on documents in a house where cocaine was seized was the same Jose Rivera whose vehicle was parked in the driveway of that same house and who was identified by an undercover officer's unwitting drug salesman as that salesman's supplier.

On appeal, plaintiff contends that the trial court clearly erred in dismissing the charge against defendant. We agree. In *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996), our Supreme Court set forth the following standard for assessing the legality of a warrantless arrest:

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

A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment. By statute, an arresting officer must possess information demonstrating probable cause to believe that an offense has occurred and that the defendant committed it. MCL 764.15; MSA 28.874. Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Brinegar v United States*, 338 US 160, 175; 69 S Ct 1302; 93 L Ed 1879 (1949).

See also *People v Richardson*, 204 Mich App 71, 78-79; 514 NW2d 503 (1994); see *People v Mayberry*, 52 Mich App 450, 451; 217 NW2d 420 (1974).

In the present case, the undercover narcotics officer who occasioned defendant's arrest testified that on February 13, 1992, he made a controlled cocaine purchase from an unwitting dealer in the parking lot of a Pontiac bar. During the transaction, the dealer pointed to defendant, one of the two men standing by a running Toyota Corolla parked nearby, and told the undercover officer that defendant was his supplier. The undercover officer then checked the Corolla's license plate and discovered that it was registered to defendant, Jose Rivera. On February 17 and 24, 1992, the undercover officer arraigned two more controlled cocaine purchases from the same unwitting dealer. On each occasion, the dealer took the undercover officer to Pontiac, where the officer waited in a car while the dealer entered a house on 23 McNeal Street and returned with cocaine. During the second sale at 23 McNeal, the undercover officer observed a GMC van parked in the driveway that was registered to defendant and Theresa Rodriguez.

Following the three controlled cocaine purchases, police executed a warrant on 23 McNeal and seized, inter alia, over ninety grams of cocaine, cocaine packaging equipment, paraphernalia, and several documents bearing the name Jose Rivera. On the strength of this evidence, the undercover officer obtained a warrant for defendant's arrest. In attempting to execute the warrant, the undercover officer observed several people moving out of 23 McNeal and then learned that defendant did not reside at the address he had listed on his vehicle registrations.¹ Finally, the undercover officer determined that defendant lived at an apartment complex in Waterford. While observing the complex, the undercover officer noticed a black Mustang parked nearby that bore the same license plate number as had the Toyota Corolla that was parked by the bar where the undercover officer transacted the initial cocaine purchase. After the undercover officer saw defendant leave the apartment, he radioed for the assistance of Waterford Police, who stopped defendant's vehicle and arrested him. Though the charges against defendant relating to the cocaine found in 23 McNeal were dropped after authorities learned that the documents naming Jose Rivera found in 23 McNeal belonged to defendant's uncle, defendant was still charged for possessing the two bags of cocaine found inside the police car where defendant was detained after his arrest.

Based on these facts, we hold that the undercover officer had ample probable cause to arrest defendant. The dealer who thrice sold cocaine to the undercover officer identified defendant as his supplier. Defendant's role as a supplier was further substantiated when his vehicle was parked in the

driveway of the house on McNeal from which the unwitting dealer twice obtained cocaine and in which officers seized a large quantity of cocaine, cocaine packaging equipment, and documents bearing defendant's name. We conclude that these circumstances would lead a fair-minded person of average intelligence to believe that defendant was involved in the distribution of narcotics. Because the undercover officer had no reason to suspect that more than one Jose Rivera was associated with the drug house on McNeal when he arrested defendant, the subsequent discovery of another Jose Rivera does not negate the reasonableness of the officer's suspicions at the time defendant was arrested. Further, we reject defendant's unsupported contention that the undercover officer was obliged to research the information written on the tax forms seized from 23 McNeal to eliminate all uncertainty regarding the prospect that another Jose Rivera was involved in the suspected cocaine distribution operation.² Indeed, "sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment. . . ." *Hill v California*, 401 US 797, 804; 91 S Ct 1106; 28 L Ed 2d 484 (1971). On the basis of our conclusion that the undercover officer had probable cause to arrest defendant, we need not analyze whether probable cause existed to issue the warrant for defendant's arrest. In addition, in view of our disposition, we need not review plaintiff's remaining claim on appeal.

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

/s/ Helene N. White
/s/ Richard Allen Griffin
/s/ Dennis C. Kolenda

¹ Though the officer was cognizant when he applied for the warrant that defendant had not listed 23 McNeal as his official address, the undercover officer testified that he places little credence in the address listed by people suspected of being involved in the narcotics trade. In support of his view, the undercover officer noted the ease with which people tend to move from place to place.

² Defendant suggests that a quick analysis of the tax form would have impeached suspicion that defendant was the same Jose Rivera as was listed on the seized tax form. To support this claim, defendant avers that the tax form revealed that the occupant of 23 McNeal had a twelve-year-old daughter and that it is highly unlikely that the twenty-three-year-old defendant had a twelve-year-old daughter. However, even assuming that such an observation should have inspired further research, the argument is specious in this case because the tax form does not describe a twelve-year-old daughter, but shows that Jose Rivera had a daughter who had lived at 23 McNeil for twelve months. Further, defendant points this Court to no authority for the proposition that officers trying to uncover participants in the narcotics trade must scrutinize tax forms and telephone the former employers listed thereon to determine if the at large suspect is the same person whom officers are seeking.