

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LARETHA LYNN TOLBERT,

Defendant-Appellee.

UNPUBLISHED

July 15, 1997

No. 197658

Recorder's Court

LC No. 96-004866

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

The Wayne County Prosecutor appeals by right an order of the Recorder's Court, dismissing this prosecution and quashing the fruits of a search warrant on grounds the warrant was invalidly issued by a 36th District Court Judge acting as magistrate. This case is being decided without oral argument pursuant to MCR 7.214(E).

Where a search warrant has been issued by a magistrate, a reviewing court may not reconsider the information supplied in support of the warrant request *de novo* or under an abuse of discretion standard, but must defer to the magistrate's decision, asking only whether there was a substantial basis for the magistrate to conclude that probable cause existed. *People v Russo*, 439 Mich 584; 487 NW2d 698 (1992).

Here, critical portions of the warrant were based on information supplied to a Detroit police officer, assigned to the Narcotics Division, by an anonymous caller. Where the source of information in support of a search warrant request 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 the information is reliable must appear in the affidavit. MCL 780.653; MSA 28.1259(3). The informant advised the officer that Albert "Donnell" Deavers, a person with at least one controlled substance conviction, was storing cocaine in his bedroom closet and guns and money under the mattress at 14610 Whitcomb in the City of Detroit. From the information itself, identifying the particular locations where the contraband and related items were being kept, the magistrate could

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

properly infer that the anonymous caller spoke from personal knowledge. *People v Stumpf*, 196 Mich App 218; 492 NW2d 795 (1992).

The same anonymous caller supplied information concerning Deavers almost exactly two months earlier, which led to investigation, a search warrant, and three arrests. The new information had been partially verified by independent investigation, which indicated circumstantially that Deavers was storing cocaine at the Whitcomb address and transferring portions for sale to individual users to the Pinehurst address that was the subject of the previous raid generated from the original tip. The magistrate could reasonably conclude from these facts that the informant was credible or the information reliable. *People v Lucas*, 188 Mich App 554; 470 NW2d 460 (1991). The magistrate also reasonably concluded that probable cause to search the Whitcomb address for controlled substances existed. The Recorder's Court erred in ruling otherwise.

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

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple