

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN
ex rel JOHN D. O'HAIR, PROSECUTING
ATTORNEY,

UNPUBLISHED
August 1, 1997

Plaintiff-Appellee,

v

No. 190948
Wayne Circuit Court
LC No. 95-549244

ONE 1991 CADILLAC, \$447 U.S. CURRENCY,
ONE 1994 DODGE RAM VAN
and \$345 U.S. CURRENCY,

Defendants,

and

JAMES PRESTON GOWDER
and REUBEN LOUIS BERRY,

Claimants-Appellants.

Before: Cavanagh, P.J., and Reilly and White, JJ.

PER CURIAM.

Claimants appeal as of right from the trial court's judgment of forfeiture, which ordered the forfeiture of Berry's van, Gowder's car and \$345 to plaintiff as a result of claimants' apparent involvement in drug trafficking.¹ We reverse the judgment of forfeiture with respect to the van and affirm in all other respects.

I.

Claimant Berry argues on appeal that the evidence linking him to drug trafficking should have been suppressed because the warrant used to search the house where he was living was invalid. The

warrant was invalid, defendant argues, because the affidavit in support based its assertion of probable cause on the uncorroborated tip of an informant whose reliability and credibility had not been established. According to defendant, the affidavit also contained a false statement about the presence of marijuana at a house where Gowder discussed a drug deal with an undercover police officer.

We disagree with Berry's assertion that the affidavit supporting the warrant did not provide probable cause for the search of his house. On the contrary, we hold that a person of reasonable caution could have concluded from the affidavit that drugs would be found at Berry's house. *People v Chandler*, 211 Mich App 604, 612; 536 NW2d 799 (1995). The officer who led the investigation of claimants and signed the affidavit stated in the affidavit that he had ten years of experience investigating drug offenses and was familiar with the sale, distribution and packaging of drugs. This experience would help the officer determine whether the informant was reliable and credible. *People v Lucas*, 188 Mich App 554, 569-570; 470 NW2d 460 (1991). Further, the affidavit affirms that police officers conducted an independent investigation to verify the informant's information. *People v Harris*, 191 Mich App 422, 425-426; 479 NW2d 6 (1991). Police officers had conducted surveillance of Berry's house, based on the informant's tip and on a prior complaint about drug sales at Berry's house, for several days before the raid and search. During this time officers saw several people arrive at Berry's house, stay for a moment, then leave. The officer leading the investigation asserted that this behavior was consistent with drug trafficking. Based on these facts and circumstances asserted in the affidavit, we conclude that the trial court properly determined that the affidavit provided probable cause to search Berry's house. *People v Sloan*, 450 Mich 160, 168-169; 538 NW2d 380 (1995); *Chandler, supra* at 612. We need not address defendant's claim that the affidavit contained a false statement because even if the information challenged by defendant were excluded, there was ample evidence to establish probable cause. *People v Sawyer*, 215 Mich App 183, 194; 545 NW2d 6 (1996).

II.

Berry next argues that the trial court erred in ordering the forfeiture of his van and the money found during the search of his house because plaintiff failed to produce sufficient evidence to connect Berry's use of his van and the money to drug trafficking. With respect to the van, we agree.

In order for an asset to be ordered forfeited, the trial court must find that there is a substantial connection between that asset and the underlying criminal activity. In contrast, property that has only an incidental or fortuitous connection to the unlawful activity is not subject to forfeiture. [*In re Forfeiture of \$1,159,420*, 194 Mich App 134, 146; 486 NW2d 326 (1992).]

Findings of a trial court sitting without a jury will not be set aside on appeal unless they are determined to be clearly erroneous. [*In re Forfeiture of \$5,264*, 432 Mich 242, 260; 439 NW2d 246 (1989).]

Plaintiff's theory was that there was a nexus between three houses, one each on Traverse, Holcomb and Iowa streets. The undercover officer was introduced to Gowder at the house on

Traverse; Gowder agreed to sell the officer a half-pound of marijuana. Gowder lived at the Iowa house, and Berry rented the Holcomb house from Gowder. According to the affidavit submitted for the search warrant of the Holcomb house, the informant stated that controlled substances were not sold from Holcomb, but were distributed from there by Gowder.

The evidence established that scales and a large amount of marijuana were found at the house on Holcomb where Berry lived. Berry's van was parked outside at the time the house was searched. Berry's van was also seen outside the house on other earlier occasions. On March 8, 1995, Berry was seen arriving at the Holcomb address in the van and going inside the house. Shortly thereafter, groups of people began to "mill and gather about," which one officer described as being consistent with the arrival of controlled substances. Referring to this evidence, the court concluded:

[T]he marijuana had to be transported to that address where it was used for purposes of him being in the distribution business.

And I'm perfectly at peace, given the fact that he had rolled up on the 8th in his van, that his van was parked there on the 11th, and there's no indication of other vehicles being involved here, that reason and common sense certainly [sic] a sufficient amount of evidence for my purposes in a civil suit to believe that he brought marijuana in the van [and] that he does his business out of that house. Therefore, the van is certainly subject to forfeiture.

The court later noted that testimony from the officer indicated that "between the 3rd and the 11th, the Cadillac [belonging to Gowder] and the van had been seen on that location [Traverse] and on Holcomb several times, both of them."

Contrary to the trial court's statement, there was no testimony that Berry's van was seen at any location other than the house where Berry lived. The court's finding to the contrary was clearly erroneous. Furthermore, we disagree with the conclusion drawn by the trial court that because the drugs must have gotten to the Holcomb address somehow, the van was used. Evidence that the van owned by Berry was parked outside the house where he resided and where marijuana was discovered is inadequate to establish a substantial connection between the van and drug trafficking.

Berry's argument that the money should not have been forfeited is premised upon his argument that the marijuana at the Holcomb house was illegally seized because the search warrant was not supported by probable cause. Having rejected the premise of defendant's argument, we likewise reject his argument that the money was not subject to forfeiture.

III.

Gowder raises three arguments on appeal. First, he argues that evidence stemming from the seizure of marijuana and money from his person should have been suppressed because the stop leading to the seizure was illegal. We disagree. Gowder had promised a future delivery of half a pound of marijuana to an undercover officer. Further, Gowder had been seen earlier in the day of the stop at

Berry's house on Holcomb, which was under investigation as a site of drug trafficking. The police officers who stopped Gowder had a reasonable, particular suspicion that Gowder had been engaging in, and was about to engage in, criminal activity. *People v Nelson*, 443 Mich 626, 632; 505 NW2d 266 (1993).

Gowder's promise to deliver the marijuana to the undercover officer also supported his arrest. MCL 333.7501; MSA 14.15(7501) specifically authorizes a police officer to arrest a person without a warrant upon reasonable cause to believe that the person is committing or has committed a felony violation of the Controlled Substances Act, regardless of whether the violation was committed in the officer's presence. *People v Henry Jones*, 162 Mich App 675, 678; 413 NW2d 477 (1987). Possession with intent to deliver marijuana is a felony, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), and supports the arrest. Once arrested, Gowder could lawfully be searched incident to arrest. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). We thus hold that the trial court did not err in admitting evidence stemming from the stop and the seizure of the marijuana and money from Gowder. *In re Forfeiture of One 1978 Sterling Mobile Home and Miscellaneous Money and Property*, 205 Mich App 427, 429; 517 NW2d 812 (1994).

IV.

Gowder next argues that the evidence seized from his house on Iowa linking him to drug trafficking should have been suppressed because the warrant used to search his house was invalid. The warrant was invalid, defendant argues, because the affidavit in support based its assertion of probable cause on the uncorroborated tip of an informant whose reliability and credibility had not been established. We disagree.²

We hold that a person of reasonable caution could have concluded from the affidavit that drugs would be found at Gowder's house. *Chandler, supra* at 612. The officer who led the investigation of claimants and signed the affidavit stated in the affidavit that he had ten years of experience investigating drug offenses and was familiar with the sale, distribution and packaging of drugs. This experience would help the officer determine whether the informant was reliable and credible. *Lucas, supra* at 569-570. Further, the officer also stated that he had learned that drugs and the paperwork verifying their sale were often kept in separate locations. The affidavit also affirms that police officers conducted an independent investigation to verify the informant's tip. *Harris, supra* at 435-426. Officers had Berry's house under surveillance as a suspected site of drug trafficking. Gowder had been seen traveling from Berry's house to his house on the day he was arrested and the search of his house carried out. During the search of Berry's house, performed just before the search of Gowder's house, papers with Gowder's name and address were found. Based on these facts and circumstances asserted in the affidavit, we conclude that the trial court properly determined that the affidavit provided probable cause to search Gowder's house. *Sloan, supra* at 168-169; *Chandler, supra* at 612.

V.

Finally, Gowder argues that the trial court erred in ordering the forfeiture of his Cadillac because plaintiff failed to produce sufficient evidence to connect Gowder's use of his Cadillac to drug trafficking. We disagree. Plaintiff established a substantial connection between the car and drug trafficking. *In re Forfeiture of \$1,159,420, supra* at 146. Marijuana was found on Gowder's person and in his home. Gowder had promised the delivery of half a pound of marijuana to an undercover police officer several days before Gowder's arrest. The officer saw Gowder drive away from that meeting in a Cadillac. The Cadillac was also seen at Berry's house during the time that the house was under surveillance as a suspected site of drug trafficking. When Gowder was arrested in his car, he had marijuana on his person. Based on this evidence, we hold that the trial court did not err in finding a substantial connection between Gowder's Cadillac and the sale or transport of marijuana.

The judgment of forfeiture is reversed with respect to forfeiture of Berry's 1994 Dodge Ram van and affirmed in all other respects.

/s/ Mark J. Cavanagh

/s/ Maureen Pulte Reilly

¹ Claimants were not facing criminal prosecution at the time of trial.

² Gowder also claims that the marijuana and money seized from him on his arrest could not support the affidavit because the stop was invalid, an argument we rejected in section III *supra*.