

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD RIVERA,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 193560

Recorder's Court

LC No. 94-002448

Before: Markman, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver over 650 grams of cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). The trial court sentenced him to life imprisonment for possession with intent to deliver over 650 grams of cocaine and thirty days to one year imprisonment for possession of marijuana. Defendant now appeals as of right, and we affirm.

Prior to trial, defendant moved to suppress evidence seized by the police pursuant to a search warrant. Defendant argued that the affidavit upon which the warrant was based failed to establish probable cause to believe that evidence of a crime or contraband was within the stated location. On appeal, defendant contends the trial court erred in denying his motion to suppress. We disagree.

A search warrant may issue only upon a showing of probable cause. US Const, Amend IV; Const 1963, art 1, § 11. Probable cause must be based on facts presented to the issuing magistrate by oath or affirmation. This Court defers to the magistrate's conclusion that probable cause to search existed and will uphold its determination unless a reasonably cautious person could not have concluded there was a substantial basis for the finding of probable cause. *People v Sloan*, 450 Mich 160, 167-168; 538 NW2d 380 (1995). Probable cause exists when the facts and circumstances would allow a person of reasonable prudence to believe evidence of a crime or contraband sought is in the stated place. *People v Russo*, 439 Mich 584, 606-607; 487 NW2d 698 (1992). In reviewing a magistrate's decision, the search warrant and the underlying affidavit are read in a common-sense and realistic manner. *Sloan*, *supra* at 168.

Where, as here, the underlying affidavit is based on information supplied by an unnamed person, it must contain “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 that the information is reliable.” MCL 780.653; MSA 28.1259(3). In the instant case, the affidavit stated the informant personally observed the presence of narcotics inside the place to be searched. According to the affidavit, the informant saw defendant breaking cocaine down into small packages for sale. The affiant also alleged the informant had provided information in the past that resulted in a felony arrest and the recovery of large amounts of cocaine, a scale, and handguns. Under such circumstances, we conclude the affidavit contained sufficient facts to establish that the informant was credible and his or her observations were based on personal knowledge. See *People v Humphrey*, 150 Mich App 806, 811-812; 389 NW2d 494 (1986).

Next, defendant argues he is entitled to a new trial on the basis of prosecutorial misconduct. Defense counsel failed to object to any of the instances of alleged misconduct. Appellate review of allegedly improper remarks is generally precluded absent a timely objection unless a curative instruction could not have eliminated the prejudicial effect, or where failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). After carefully reviewing the record, we find any prejudice that may have resulted from the prosecutor’s remarks could have been cured if defendant had objected and asked the trial court to caution the jurors to disregard the allegedly improper statements. Accordingly, appellate review of the prosecutor’s remarks is precluded. *People v Rivera*, 216 Mich App 648, 651-652; 550 NW2d 593 (1996).

Affirmed.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald